

Studies in American Tort Law

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SIXTH EDITION

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To the happy memory of my parents, Anna Ruth Johnson and Harry P. Johnson, for
providing a world of opportunity and inspiration

—VRJ

To my family

—CL

Summary of Contents

Chapter 1	An Overview of Modern Tort Liability: Intentional Injury, Failure to Exercise Care, and Strict Liability	3
Chapter 2	Basic Intentional Torts	49
Chapter 3	Defenses and Privileges	157
Chapter 4	Damages	205
Chapter 5	Negligence: Basic Principles	265
Chapter 6	Proving Negligence	369
Chapter 7	Factual Causation	409
Chapter 8	Proximate Causation	469
Chapter 9	Limited Duty: Failure to Act	531
Chapter 10	Limited Duty: Premises Liability	599
Chapter 11	Limited Duty: Negligent Infliction of Severe Emotional Distress	649
Chapter 12	Limited Duty: Alcohol-Related Injuries	687
Chapter 13	Torts Involving Conception, Pregnancy, Birth, and Adoption	711
Chapter 14	Strict Liability	735
Chapter 15	Products Liability	789
Chapter 16	Defenses Based on Plaintiff's Conduct	855
Chapter 17	Joint Tortfeasors	903
Chapter 18	Immunities	933
Chapter 19	Statutes of Limitations	967
Chapter 20	Interference with Possession or Use of Land: Trespass and Nuisance	989
Chapter 21	Misrepresentation	1039
Chapter 22	Defamation	1087
Chapter 23	Invasion of Privacy	1153
Index		1195

Contents

Table of Cases	xxiii
Table of Books and Authorities	liii
First Edition Preface	lix
Sixth Edition Preface and Acknowledgements	lxi
Chapter 1 · An Overview of Modern Tort Liability: Intentional Injury, Failure to Exercise Care, and Strict Liability	3
A. Intentionally Inflicted Injury	12
Garratt v. Dailey	12
B. Actions Based on Lack of Care	16
Doe v. Roe	16
Cohen v. Petty	23
C. Strict Liability Conduct	27
Harris v. Anderson County Sheriff's Office	27
D. An Introduction to Insurance	37
1. Liability Insurance	38
Crisci v. Security Insurance Co. of New Haven	39
2. First-Party Insurance	46
Chapter 2 · Basic Intentional Torts	49
A. The Concept of Intent	49
1. Intent to Injure	49
Lambertson v. United States	49
2. Intent and Mistake	52
Ranson v. Kitner	52
3. Intent and Insanity	54
McGuire v. Almy	54
4. Transferred Intent	59
Keel v. Hainline	59
Brudney v. Ematrudo	65
B. Battery and Assault	67
Noble v. Louisville Transfer Co.	68
Picard v. Barry Pontiac-Buick, Inc.	72
Moore v. El Paso Chamber of Commerce	73
Western Union Telegraph Co. v. Hill	76
C. Intentional or Reckless Infliction of Severe Emotional Distress	82

1. In General	82
Harris v. Jones	85
2. Abusive Language	96
Slocum v. Food Fair Stores of Florida, Inc.	96
3. Domestic Violence and Harassment	99
Feltmeier v. Feltmeier	99
4. Bystanders and Third Persons	110
D. False Imprisonment	116
1. Unconsented Intentional Confinement within Boundaries	116
Bird v. Jones	116
2. Unlawful Force, Threat of Force, or Assertion of Legal Authority	120
Morales v. Lee	120
Enright v. Groves	123
Johnson v. Barnes & Noble Booksellers, Inc.	125
3. Defenses	128
Peterson v. Sorlien	128
E. Trespass to Land	134
F. Trespass to Chattels and Conversion	135
CompuServe, Inc. v. Cyber Promotions, Inc.	136
Henson v. Reddin	140
Russell-Vaughn Ford, Inc. v. Rouse	144
Kremen v. Cohen	149
Chapter 3 · Defenses and Privileges	157
A. Consent	157
1. Consent in Fact	158
Davies v. Butler	158
2. Apparent Consent	160
O'Brien v. Cunard S.S. Co.	160
3. Implied Consent	162
Miller v. HCA, Inc.	162
4. Consent Given Because of a Mistake	166
DeMay v. Roberts	166
B. Defense of Self and Others	171
Silas v. Bowen	171
Drabek v. Sabley	176
C. Privileges Relating to Property	179
1. Defense of Property	179
Katko v. Briney	179
2. Recapture of Chattels	183
3. Detention for Investigation	184
Dillard Department Stores, Inc. v. Silva	184
D. Public Necessity and Private Necessity	188
Surocco v. Geary	188

Wegner v. Milwaukee Mutual Insurance Co.	190
Vincent v. Lake Erie Transp. Co.	193
Ploof v. Putnam	195
E. Unlawful Conduct	197
Barker v. Kallash	197
Chapter 4 · Damages	205
A. In General	205
1. Introduction	205
Anderson v. Sears, Roebuck & Co.	205
Meyer ex rel. Coplin v. Fluor Corporation	214
2. The Collateral-Source Rule	217
Helfend v. Southern California Rapid Transit District	217
3. The Avoidable-Consequences Rule	221
Zimmerman v. Ausland	221
4. Pre-Judgment Interest	223
B. Survival and Wrongful-Death Actions	225
Gonzalez v. New York City Housing Authority	228
Economic Analysis: Damages, Deterrence, and Compensation: Valuing Lives and Safety Precautions	234
C. Damages for Loss of Earning Capacity	236
1. Earning History	237
O’Shea v. Riverway Towing Co.	237
2. Taxation of Awards	240
D. Punitive Damages	242
State Farm Mutual Automobile Insurance Co. v. Campbell	246
Problem: Overbilling Clients	261
E. Statutory Limits on Damage Recoveries and Related “Reform” Legislation	262
Chapter 5 · Negligence: Basic Principles	265
A. The Concept of Duty	265
Palsgraf v. Long Island Railroad Co.	266
B. The Negligence Balancing Test	274
Nussbaum v. Lacopo	274
Gulf Refining Co. v. Williams	276
United States v. Carroll Towing Co.	278
Negligence as an Economic Concept	281
Chicago, B & Q. R.R. Co. v. Krayenbuhl	283
C. The Reasonable-Person Standard	286
1. Jury Instructions on Reasonable Care	288
a. The Actor’s Good Faith	290
b. Sudden Emergencies	290
Bedor v. Johnson	290
c. Physical Disabilities	296

d. Religious Beliefs	298
Williams v. Bright	298
e. Age	301
Goss v. Allen	301
f. Mental Deficiencies	305
Breunig v. American Family Ins. Co.	305
g. Superior Skills or Knowledge	308
h. Professional Credentials: Legal Malpractice and Medical Malpractice	308
Biomet Inc. v. Finnegan Henderson LLP	309
Russo v. Griffin	318
Boyce v. Brown	322
Scott v. Bradford	328
i. Race, Gender, and Ethnicity	334
John Doe BF v. Diocese of Gallup	337
2. Judge-Made Standards	338
Helling v. Carey	340
3. Standards Created by Statute	342
4. Standards Adopted by Courts Based on Legislation	343
a. In General	344
Gipson v. Kasey	344
Stachniewicz v. Mar-Cam Corp.	347
Miglino v. Bally Total Fitness of Greater New York, Inc.	351
b. Unexcused Violations of Statute	355
Martin v. Herzog	355
c. Excused Violations of Statute	358
Ranard v. O’Neil	358
Zeni v. Anderson	359
d. Compliance with Statute	362
Montgomery v. Royal Motel	362
e. Defenses to Liability Based on Statute	366
D. Special Standards of Care	367
Chapter 6 · Proving Negligence	369
A. Evidence of Custom	369
The T.J. Hooper	369
Low v. Park Price Co.	371
B. Circumstantial Evidence	374
1. Constructive Notice	375
Goddard v. Boston & M.R. Co.	375
Anjou v. Boston Elevated Ry. Co.	375
2. Mode of Operation	377
Sheehan v. Roche Brothers Supermarkets, Inc.	377
C. <i>Res Ipsa Loquitur</i>	380

1. Probably the Result of Negligence	380
2. Facts Pointing to the Defendant	383
a. Control	383
Mobil Chemical Co. v. Bell	383
b. Greater Access to Information	390
Mahowald v. Minnesota Gas Co.	390
c. <i>Res Ipsa</i> , the Plaintiff's Own Conduct, and Other Possible Causes	392
d. Procedural Effect	394
Mangual v. Berezinsky	395
D. Multiple Defendants	397
Ybarra v. Spangard	397
E. Disposing of Unfavorable Evidence	401
Trevino v. Ortega	401
Chapter 7 · Factual Causation	409
A. An Overview of Causation	409
Williams v. Steves Industries, Inc.	409
B. The Traditional Rules of Factual Causation	412
1. <i>Sine Qua Non</i> : The But-For Test	412
Reynolds v. Texas and Pacific Railway Co.	412
Kramer Service, Inc. v. Wilkins	414
Saelzler v. Advanced Group 400	416
2. Independently Sufficient Causes and Related Problems	421
Anderson v. Minneapolis, St. P. & S.S.M. Ry. Co.	421
3. The "Loss of a Chance" Rule	426
Matsuyama v. Birnbaum	426
"Loss of a Chance" and Deterrence	431
C. Modifications of the Traditional Approach	432
1. Multiple Fault and Alternative Liability	432
Summers v. Tice	432
2. Market-Share Liability and Enterprise Liability	434
Sindell v. Abbott Laboratories	434
Hymowitz v. Eli Lilly and Co.	442
D. Liability Based on Concerted Action	450
Herman v. Wesgate	450
Kubert v. Best	451
Lussier v. Bessette	455
E. Incitement	462
Chapter 8 · Proximate Causation	469
A. Introduction	469
B. Direct Causation	472
C. Foreseeability	474

("Wagon Mound No. 1") Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., Ltd.	474
("Wagon Mound No. 2") Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co.	478
1. The "Eggshell Skull" Doctrine	480
Simeonidis v. Mashantucket Pequot Gaming Enterprise	480
Economic Analysis: "Eggshell Skulls" and Proximate Cause	482
2. Manner of Occurrence and Kind and Extent of Harm	483
Merhi v. Becker	483
("Kinsman No. 1") Petition of Kinsman Transit Co.	485
("Kinsman No. 2") Petition of Kinsman Transit Co.	488
D. Result within the Risk	490
1. In General	490
Thompson v. Kaczinski	491
2. Policy and Proximate Cause	498
Economic Analysis: Avoiding Over-Deterrence	498
E. Intervening and Superseding Causes	500
1. Foreseeable End Results	501
Derdiarian v. Felix Contracting Corp.	501
2. Intervening Acts	503
Chapman v. Milford Towing & Service, Inc.	503
Johnson v. Jacobs	505
3. Special Applications of the Rules on Intervening and Superseding Causes	510
a. Rescuers	510
Altamuro v. Milner Hotel, Inc.	510
b. Victim Suicide	517
4. Relationship to Comparative Principles	520
F. Shifting Responsibility	521
Goar v. Village of Stephen	522
Bailey v. Lewis Farm, Inc.	525
Chapter 9 · Limited Duty: Failure to Act	531
A. The Traditional Rule of No Liability for Nonfeasance	531
Johnson v. Minnesota	532
B. Qualifications and Exceptions	535
1. Duties Based on the Defendant's Relationship to the Victim or the Injurer	535
De Vera v. Long Beach Public Transportation Co.	535
Munn v. The Hotchkiss School	538
2. Protection from Crime	546
Remsburg v. Docusearch, Inc.	546
Jones v. Secord	549
Wolfe v. MBNA America Bank	551

3. Mental Health Professionals	554
Peck v. Counseling Service of Addison County, Inc.	554
4. Creation of a Dangerous Situation	559
Borrack v. Reed	559
5. Voluntarily Assumed Duties	563
Coffee v. McDonnell-Douglas Corp.	563
Sall v. T's, Inc.	570
6. Negligent Entrustment	578
McKenna v. Straughan	578
7. Statutes Relating to Rescue	580
C. Abrogation of the General Rule	583
D. The Public-Duty Rule	584
Riss v. City of New York	584
Sorichetti v. City of New York	590
Chapter 10 · Limited Duty: Premises Liability	599
A. The Traditional Categories: Trespassers, Licensees, and Invitees	599
1. Trespassers	600
Bonney v. Canadian National Railway Co.	600
Humphrey v. Twin State Gas & Electric Co.	603
Banker v. McLaughlin	605
2. Licensees and Invitees	608
Andrushchenko v. Silchuk	610
Campbell v. Weathers	614
Inkel v. Livingston	617
3. Known or Obvious Dangers	619
B. Modification of the Traditional Approach	621
1. Abrogation	621
Foster v. Costco Wholesale Corp.	622
2. Recreational Use Statutes	625
C. The Demands of Reasonable Care for Possessors	626
1. Ill and Injured Invitees	627
2. Protection Against Crime	627
Trammell Crow Central Texas, Ltd. v. Gutierrez	628
Boyd v. Racine Currency Exchange, Inc.	632
3. Duties to Persons Outside the Premises	634
a. Persons "Invited" onto the Land of Another	634
Orthmann v. Apple River Campground, Inc.	634
D. Lessors and Lessees	640
Matthews v. Amberwood Associates Ltd. Partnership, Inc.	641
Restatement, Third, of Torts: Liability for Physical and Emotional Harm	646
Chapter 11 · Limited Duty: Negligent Infliction of Severe Emotional Distress	649

A. Serious and Genuine Harm	649
Lewis v. Westinghouse Electric Corporation	649
B. Some Special Cases	654
Johnson v. New York	655
C. Distress Occasioned by Harm to Another	660
Eskin v. Bartee	662
D. Relationship to Other Actions	671
1. Loss of Consortium	671
Lozoya v. Sanchez	671
2. Breach of Fiduciary Duty	675
F.G. v. MacDonell	675
E. Abrogation of Independent Actions Based on Negligence	681
Boyles v. Kerr	681
Chapter 12 · Limited Duty: Alcohol-Related Injuries	687
A. Liability of Sellers	688
New York General Obligations Law	688
B. Liability of “Social Hosts”	692
Kelly v. Gwinnell	692
C. Possessors of Property	699
Del Lago Partners, Inc. v. Smith	699
D. Other Theories of Liability	703
West v. East Tennessee Pioneer Oil Co.	703
Chapter 13 · Torts Involving Conception, Pregnancy, Birth, and Adoption	711
A. Unwanted Pregnancy	711
McKernan v. Aasheim	711
B. Wrongful Birth and Wrongful Life	717
Smith v. Cote	717
C. Prenatal Injuries	726
Farley v. Sartin	726
D. Wrongful Adoption	731
Burr v. Board of County Commissioners of Stark County	731
Chapter 14 · Strict Liability	735
A. Employer and Employee	736
1. Workers’ Compensation	736
New York Workers’ Compensation Law	738
2. Respondeat Superior	740
Smith v. Lannert	740
John R. v. Oakland Unified School District	748
3. Non-delegable Duties	753
Davis v. Devereux Foundation	755
Economic Analysis: Deterrence under Negligence and Strict Liability	763

4. Ostensible or Apparent Agency	765
Baptist Memorial Hospital System v. Sampson	765
5. The Fellow-Servant Rule	769
B. Harm Inflicted by Animals	769
Maryland Code, Courts and Judicial Proceedings, § 3-1901	770
C. Abnormally Dangerous Activities	773
Stout v. Warren	773
Economic Analysis: Single-Injurer Accidents	778
Economic Analysis: Tort Liability and Cross-Subsidization	780
D. Other Theories	783
1. Motor Vehicle Owner Responsibility Laws	783
2. Family Purpose Doctrine	784
Starr v. Hill	784
Chapter 15 · Products Liability	789
A. Historical Background	789
1. From “No Liability” to Negligence	789
2. From Negligence to Strict Liability	790
Escola v. Coca Cola Bottling Co. of Fresno	794
Restatement, Second, of Torts § 402A (1965)	796
Restatement, Third, of Torts: Product Liability	799
B. Manufacturing Defects	803
Linden v. CNH America, LLC	803
C. Design Defects	806
Pannu v. Land Rover North America, Inc.	806
Richetta v. Stanley Fastening Systems, L.P.	813
D. Failure to Warn	818
Lavin v. Conte	818
E. Damage to Property	830
1. Harm to the “Product Itself”	830
2. The Economic Loss Rule(s)	831
Liability for Economic Losses	832
a. The Broad Formulation of Economic Loss Rule	832
b. Narrow Formulations of the Economic Loss Rule	835
c. The Economic Loss Rule Today	836
Sharyland Water Supply Corp. v. City of Alton	837
F. Defenses	841
1. State-of-the-Art Defense	841
Economic Analysis: Risk Spreading	842
2. Government Contractor Defense	843
3. “Misuse” and Other Plaintiff Misconduct	844
4. Pre-Emption by Federal Law	846
Wyeth v. Levine	846
G. Policy Issues	852

Economic Analysis: Liability and Safety	852
1. Product-Category Liability	853
Chapter 16 · Defenses Based on Plaintiff’s Conduct	855
A. Traditional Contributory Negligence	855
1. In General	855
2. Imputed Contributory Negligence	856
Western Union Tel. Co. v. Hoffman	856
3. Last Clear Chance	858
B. Comparative Negligence	858
Hilen v. Hays	858
C. Assumption of the Risk	862
1. Introduction	862
Coleman v. Ramada Hotel Operating Co.	862
2. Express Assumption of the Risk	866
Gross v. Sweet	866
3. Primary Implied Assumption of the Risk	874
Turcotte v. Fell	874
Trupia v. Lake George Central School District	881
Minnich v. Med-Waste, Inc.	884
4. Secondary Implied Assumption of Risk	887
Pachunka v. Rogers Construction, Inc.	887
D. Comparative Fault	892
Kaneko v. Hilo Coast Processing	892
E. The “Seatbelt Defense”	899
Chapter 17 · Joint Tortfeasors	903
A. Joint and Several Liability	903
1. Definitions	903
2. Divisibility and Apportionment of Harm	905
Michie v. Great Lakes Steel Division, National Steel Corp.	905
Bruckman v. Pena	907
3. Effect of Comparative Negligence and Comparative Fault	909
Economic Analysis: Incentives Relating to Joint and Several Liability	913
B. Contribution and Indemnity	914
Brochner v. Western Insurance Company	914
Leung v. Verdugo Hills Hospital	919
C. Mary Carter Agreements	927
Elbaor v. Smith	927
Chapter 18 · Immunities	933
A. Family Immunities	933
1. Spousal Immunity	933
2. Parental Immunity	934

Rousey v. Rousey	935
Sepaugh v. LaGrone	938
3. Sibling Immunity	945
Lickteig v. Kolar	945
B. Sovereign Immunity and Governmental Immunity	946
1. The Federal Tort Claims Act	947
2. State Tort Claims Acts	949
3. Governmental Immunity of Local Entities	950
a. Historical Development	950
b. Local Government Immunity Today	952
Parker v. St. Lawrence County Public Health Department	953
C. Official Immunity	955
1. Federal Officials and Employees	955
2. State Officials and Employees	957
D. Charitable Immunity	960
Albritton v. Neighborhood Centers Association for Child Development	960
Chapter 19 · Statutes of Limitations	967
A. Introduction	967
New York C.P.L.R. § 214	968
B. Tolling the Statute of Limitations	969
Tyson v. Tyson	970
C. Statutes of Repose	982
Schramm v. Lyon	984
Chapter 20 · Interference with Possession or Use of Land: Trespass and Nuisance	989
A. Trespass to Land	990
Gavcus v. Potts	990
B. Trespass and Private Nuisance	994
1. Trespass and Nuisance Distinguished	995
a. The Traditional Distinction	995
b. The Tangible-Mass “Requirement”	996
2. Significant Harm	997
3. Assessing Unreasonableness	999
Prah v. Maretti	1001
Winget v. Winn-Dixie Stores, Inc.	1005
Smith v. Jersey Central Power & Light Co.	1007
Economic Analysis: The Coase Theorem and the Law of Nuisance	1011
C. Public Nuisance	1015
1. In General	1015
2. Public Nuisance and Products Liability	1017
NAACP v. AcuSport, Inc.	1017

State v. Lead Industries Association, Inc.	1024
D. Remedies in Nuisance Cases	1031
Spur Industries, Inc. v. Del E. Webb Development Co.	1033
Chapter 21 · Misrepresentation	1039
A. Fraud	1039
1. Intentional or Reckless Misrepresentation	1039
John Doe 1 v. Archdiocese of Milwaukee	1040
Sovereign Pocohontas v. Bond	1045
2. Silence and the Duty to Speak	1047
Weintraub v. Krobatsch	1047
3. Statements of Opinion, Prediction, Intention, and Law	1054
Oltmer v. Zamora	1055
Tessier v. Rockefeller	1060
National Conversion Corp. v. Cedar Building Corp.	1063
4. Justifiable or Reasonable Reliance	1065
Italian Cowboy Partners, Ltd. v. Prudential Ins. Co.	1068
B. Negligence and Strict Liability	1073
1. Negligence Misrepresentation in Business Transactions	1073
2. Negligence Causing Physical Harm	1075
3. Strict Liability	1075
Richard v. A. Waldman and Sons, Inc.	1075
C. Liability to Third Parties	1077
1. Based on Deceit	1077
2. Based on Negligent Misrepresentation	1078
Cast Art Industries, LLC v. KPMG, LLP	1078
Economic Analysis: Audits and the Cheaper Cost Avoider	1086
Chapter 22 · Defamation	1087
A. What Statements Are Defamatory?	1087
1. Harm to Reputation	1087
Grant v. Reader's Digest Association, Inc.	1088
2. The False Fact Requirement	1091
3. Truth	1091
4. Of and Concerning the Plaintiff	1094
Rose v. Daily Mirror, Inc.	1096
5. Publication	1099
Economopoulos v. A. G. Pollard Co.	1099
B. Libel and Slander	1104
C. Constitutional Considerations	1106
1. Public Officials and Public Figures	1107
New York Times Co. v. Sullivan	1107
2. Plaintiffs Who Are Not Public Figures	1117
Gertz v. Robert Welch, Inc.	1117
3. Presumed Damages Today	1127

W.J.A. v. D.A.	1127
Smith v. Durden	1131
4. Retraction Statutes	1133
5. “Fact” vs. “Opinion”	1134
Milkovich v. Lorain Journal Co.	1134
D. Privileges and Defenses	1142
1. Absolute Privileges	1143
a. Judicial-Proceedings Privilege	1143
b. Other Absolute Privileges	1144
2. Qualified Privileges	1145
a. Employers and Employees	1145
b. Others	1145
c. Loss of a Qualified Privilege	1146
d. Statutes Relating to Former Employees	1146
3. The Validity of Releases	1147
4. Other Privileges	1147
5. SLAPP Suits	1149
Comparative Defamation Law: England and the United States	1151
Chapter 23 · Invasion of Privacy	1153
A. Disclosure of Private Facts	1155
Sidis v. F-R Publishing Corp.	1155
McNamara v. Freedom Newspapers, Inc.	1159
Vassiliades v. Garfinckel’s, Brooks Brothers	1160
B. Intrusion upon Seclusion	1166
In re Marriage of Tigges	1168
Koeppel v. Speirs	1171
C. False Light	1177
West v. Media General Convergence, Inc.	1177
D. Unauthorized Use of the Plaintiff’s Name or Picture	1184
1. The “Right of Publicity”	1184
Tanner v. Ebbole	1184
2. Deceased Celebrities	1189
 Index	 1195

Table of Cases

Principal cases and the pages on which they begin are italicized.

- 532 Madison Ave. Gourmet Foods Inc. v. Finlandia Ctr., 1019, 1020
- A & M Records Inc. v. Heilman, 151
- A.H. Belo Corp. v. Corcoran, 533
- Abrams v. United States, 1138
- Abresch v. Northwestern Bell Tel. Co., 576
- Achtermann v. Bussard, 631
- Adamo v. Brown & Williamson Tobacco Corp., 818
- Adams v. Bullock, 285
- Adams v. Gillig, 1062
- Adams v. Ursell, 1014
- Adams v. YMCA of San Antonio, 760
- Adelson v. Harris, 1148
- Adkins v. Thomas Solvent Co., 998
- Aetna Health Inc. v. Davila, 328
- Agis v. Howard Johnson Co., 84
- Agrobiotech Inc. v. Budd, 1074
- Aka v. Jefferson Hosp. Ass'n Inc., 728
- Akins Funeral Home Inc. v. Miller, 659
- Albritton v. Neighborhood Centers Association for Child Development*, 960
- Alder v. Bayer Corp., 569
- Alderson v. Bonner, 90, 111, 1176
- Aleo v. SLB Toys USA Inc., 254
- Alexander v. McKnight, 1050
- Alleman v. Vermilion Publ'g Corp., 1092
- Allen v. Albright, 516, 614
- Allen v. Camp, 190
- Allen v. Dover Co-Recreational Softball League, 880
- Allen v. Virginia Hill Water Supply Corp., 995
- Allied Marketing Group Inc. v. Paramount Pictures Corp., 1095
- Allstate Ins. Co. v. Ginsberg, 1167
- Allstate Ins. Co. v. Mugavero, 34
- Allstate Ins. Co. v. Sunbeam Corp., 407
- Alpin v. Tew, 303
- Alston v. Caraco Pharmaceutical Inc., 828
- Altamuro v. Milner Hotel Inc.*, 510, 892
- Althaus v. Cohen, 325
- Altschuler v. University of Pa. Law Sch., 1103
- Alvarado v. City of Dodge City, 186
- Alvarez v. Clasen, 94
- Am. Fam. Mut. Ins. Co. v. AN/CF Acq. Corp., 461
- Amaya v. Potter, 742
- Ambrosino v. Rodman & Renshaw Inc., 1065
- American Elec. Power Co. Inc. v. Connecticut, 1016
- American Motorcycle Ass'n v. Superior Court, 904, 909
- American Powerlifting Ass'n v. Cotillo, 889
- Ammon v. Baron Automotive Group, 109

- Amoako-Okyere v. Church of the
Messiah United Methodist Church,
24
- Anand v. Kapoor, 880
- Anderson v. Fisher Broad. Co. Inc., 1160
- Anderson v. Lewis, 788
- Anderson v. Liberty Lobby Inc., 1115
- Anderson v. Miller, 707
- Anderson v. Minneapolis St. P. & S.S.M.
Ry. Co.*, 421
- Anderson v. Sears, Roebuck & Co.*, 205
- Anderson v. Wagner, 986
- Andrade v. Chojnacki, 957
- Andrews v. Stallings, 1182
- Andrews v. United Airlines Inc., 367
- Andrushchenko v. Silchuk*, 610
- Anicet v. Gant, 57
- Anjou v. Boston Elevated Ry. Co., 375
- Antoniano v. Long Island Jewish Med.
Ctr., 400
- Antwaun A. v. Heritage Mut. Ins. Co.,
342
- Arche v. United States, 724
- Archer v. Farmer Bros., 98
- Armory Park Neighborhood Associa-
tion v. Episcopal Community
Services in Arizona, 1015
- Arnold v. U. of N. Carolina at Chapel
Hill, 321
- Aroma Wines & Equip Inc. v. Colum-
bian Distrib. Services Inc., 136
- Arredondo v. Dugger, 203
- Ashe v. Radiation Oncology Assoc., 331
- Associated Press v. Walker, 1117
- Association of Unit Owners v. Dun-
ning, 798
- Astroworks Inc. v. Astroexhibit Inc.,
150
- Atcovitz v. Gulph Mills Tennis Club
Inc., 537
- Atkins v. Swimwest Family Fitness Ctr.,
870
- Atlanta-Journal Constitution v. Jewell,
1123
- Atlantic Sounding Co. Inc. v.
Townsend, 253
- Augillard v. Madura, 149
- Avellone v. St. John's Hospital, 960
- Aversano v. Palisades Interstate Pkwy.
Com'n, 957
- Ayers v. Johnson & Johnson Baby Prods.
Co., 842
- B & O R. Co. v. Goodman, 339
- Badall v. Durgapersad, 233
- Bader v. Johnson, 652, 725
- Bagley v. Bagley, 233, 871
- Bagley v. Mt. Bachelor Inc., 871
- Bailey v. C.S., 63
- Bailey v. Fed. Home Loan Bank of
Topeka, 108
- Bailey v. Gallagher, 154
- Bailey v. Lewis Farm Inc.*, 525
- Bain v. Gillespie, 276
- Bain v. Wells, 94
- Balbuena v. IDR Realty LLC, 239
- Baldwin v. Butcher, 727
- Balido v. Improved Mach. Inc., 528
- Ballou v. Sigma Nu Gen. Frat., 160
- Ballstadt v. Pagel, 1004
- Banker v. McLaughlin*, 605
- Banker's Trust Co. v. Old Republic Ins.
Co., 1040
- Baptist Memorial Hospital System v.
Sampson*, 765
- Barb v. Farmers Ins. Exch., 400
- Barcelo v. Elliott, 314
- Bard v. Jahnke, 771
- Barker v. Kallash*, 197
- Barker v. Lull Engineering Co., 810
- Barnes v. Geiger, 516
- Barnett v. Bachrach, 165
- Barnett v. Ludwig and Company, 346
- Barr v. Jacobson, 498
- Barr v. Matteo, 955
- Barry v. Quality Products Inc., 521
- Barth v. Coleman, 895
- Bartlett v. Northern Pac. Ry. Co., 286
- Baska v. Scherzer, 62

- Bass v. Nooney Co., 650
Batra v. Clark, 644
Bauman v. Crawford, 303
Baye v. Diocese of Rapid City, 977, 981
Beach Bait & Tackle v. Bull, 377
Beard v. Graff, 697
Beckman v. Butte-Silver Bow Cty., 754
Bedor v. Johnson, 290
Been v. MK Enterprise Inc., 690
Behr v. Redmond, 1065
Bell & Hudson P.C. v. Buhl Realty Co., 546
Bell v. Hutsell, 707
Bell v. Lee, 1143
Belli v. Orlando Daily Newspapers Inc., 1089
Bence v. Crawford Sav. and Loan Ass'n, 634
Bennett v. Dunn, 182
Bennett v. Reynolds, 146
Bentley v. Bunton, 1141
Benton v. YMCA, 963
Berberian v. Lynn, 58
Berger v. Hanlon, 994
Bergman & Lefkow Insurance Agency v. Flash Cab Co., 1056
Bergob v. Scrushy, 862
Berlangieri v. Running Elk Corp., 872
Berman v. Allan, 719
Bernard v. Cameron and Colby Co. Inc., 94
Bernstein v. Seacliff Beach Club, 868
Berry v. National Medical Services Inc., 569
Berry v. Sugar Notch Borough, 498
Beshada v. Johns-Manville Products Corp., 841
Best v. Taylor Machine Works, 912
Best v. U.S., 567
Bethel v. N.Y. City Transit Auth., 367
Bettis v. Islamic Republic of Iran, 111
Beynon v. Montgomery Cablevision L.P., 228
Bhatia v. Debek, 85
Biakanja v. Irving, 579
Biddle v. Warren Gen. Hosp., 334
Bilodeau-Allen v. American Media Inc., 1183
Bily v. Arthur Young & Co., 1084
Bindrim v. Mitchell, 1094
Biomet Inc. v. Finnegan Henderson LLP, 309
Bird v. Jones, 116
Birke v. Oakwood Worldwide, 1021
Birmingham Coal & Coke Co. Inc. v. Johnson, 654
Bishop v. City of Chicago, 534
Bishop v. Texas A & M Univ., 745
Bissett v. DMI Inc., 690
Bjorndal v. Weitman, 293, 294
Blackwell v. Sky High Sports Nashville Operations LLC, 873
Blakely v. Camp Ondessonk, 603
Blanchard v. Bass, 601
Block v. Tanenhaus, 1089
Blomen v. N. Barstow Co., 1026
BMW of North America Inc. v. Gore, 247, 248, 252, 310
Boim v. Quranic Literacy Institute, 460
Boll v. Sharp & Dohme, 868
Bollaert v. Witter, 80
Bolton v. Dept. of Human Services, 1091
Bonbrest v. Kotz, 727
Bonham v. Texas Dept. of Crim. Justice, 510
Bonkowski v. Arlan's Dept. Store, 186
Bonney v. Canadian National Railway Co., 600
Bonte v. Bonte, 730
Boomer v. Atlantic Cement Co., 1000, 1031
Boone v. Mullendore, 713
Booth v. Mary Carter Paint Co., 927
Boring v. Google Inc., 134
Borman v. Raymark Indus. Inc., 907
Born v. Mayers, 689

- Borne v. Celadon Trucking Services Inc., 209
- Borrack v. Reed*, 559
- Bose Corp. v. Consumers U. of the U.S. Inc., 1116
- Boucher v. Dixie Med. Ctr., 666
- Bourhill v. Young, 476
- Bouton v. Allstate Ins. Co., 79, 373
- Bowen v. Niagara Mohawk Power Corp., 798
- Bowie v. Murphy, 67
- Bowman v. City of Baton Rouge, 577
- Bowman v. Davis, 713
- Boyce & Isley PLLC v. Cooper, 1123
- Boyce v. Brown*, 322
- Boyd v. Racine Currency Exchange Inc.*, 632
- Boyd v. Travelers Ins. Co., 407
- Boyle v. United Technologies Corp., 843
- Boyles v. Kerr*, 681
- Boynton v. Burglass, 558
- Bradacs v. Jiacobone, 772
- Braitman v. Overlook Terrace Corp., 645
- Brandenburg v. Ohio, 462
- Bratt v. IBM, 1165
- Braun v. Iannotti, 1026
- Braun v. New Hope Twp., 525
- Braun v. Soldier of Fortune Magazine, 463
- Bravo v. U.S., 211
- Brenner v. American Cyanamid Co., 442
- Brenteson Wholesale v. Public Serv. Co., 1000
- Breunig v. American Family Ins. Co., 305
- Brewer v. Memphis Publ'g Co., 1123
- Brittingham v. Robertson, 1000
- Brochner v. Western Insurance Company*, 914
- Brodsky v. Osunkwo, 332
- Brookshire Bros. Ltd. v. Aldridge, 406
- Broussard v. St. Edward Mercy Health System Inc., 326
- Brown v. Adair, 737
- Brown v. Birman Managed Care Inc., 458
- Brown v. Dibbell, 333
- Brown v. Dover Downs, 626
- Brown v. E.I. Du Pont De Nemours & Co., 980
- Brown v. Shyne, 351
- Brown v. Superior Court, 444
- Brownsville Med. Ctr. v. Gracia, 577
- Brucker v. Mercola, 986
- Bruckman v. Pena*, 907
- Brudney v. Ematrudo*, 65
- Bruegger v. Faribault County Sheriff's Dept., 350
- Bruesewitz v. Wyeth LLC, 31, 413
- Bryson v. News Am. Pubs. Inc., 1106, 1141
- Brzica v. Trustees of Dartmouth College, 1052
- Bucki v. Hawkins, 619
- Buckley v. City of New York, 769
- Budden v. United States, 566
- Bullock v. Philip Morris USA, 253
- Bumpurs v. New York City Hous. Auth., 231
- Bunting v. Sea Ray Inc., 825
- Burbach v. Canwest Inv. LLC, 639
- Burcina v. City of Ketchikan, 201
- Burgess v. Perdue, 92
- Burgess v. Superior Court, 667
- Burke v. 12 Rothschild's Liquor Mart, 895
- Burke v. Webb Boats Inc., 926
- Burnam v. Patterson, 37
- Burns v. Martin, 295
- Burr v. Board of County Commissioners of Stark County*, 731
- Burrell v. Meads, 612
- Burroughs v. Massachusetts, 746
- Bushnell v. Mott, 563
- Butler v. Moore, 63

- Byers v. Southeastern Newspaper Corp. Inc., 1123
- Byrne v. Boadle, 385
- Cadek v. Great Lakes Dragway Inc., 1040
- Cafazzo v. Central Med. Health Services Inc., 798
- Cahalin v. Rebert, 113
- Cain v. Cain, 544, 1183
- Cain v. Hearst Corp., 1183
- Caldwell v. City of Philadelphia, 594
- Caldwell v. Ford Motor Co., 890
- Callahan v. Cardinal Glennon Hosp., 424
- Callahan v. Stanley Works, 402
- Callanan v. Gilman, 1019
- Calloway v. Kinkelaar, 590
- Camden County Board of Chosen Freeholders v. Beretta USA Corp., 1021
- Campbell v. Chaney, 316
- Campbell v. Weathers*, 614
- Campisi v. Acme Markets Inc., 619
- Canida v. Canida, 65
- Canterbury v. Spence, 329, 330
- Cantrell v. Forest City Publishing Co., 1180
- Cantu v. Flanigan, 211
- Cantwell v. Connecticut, 1109
- Capital Solutions LLC v. Konica Minolta Business Solutions U.S.A. Inc., 245
- Caporale v. C.W. Blakeslee & Sons Inc., 777
- Capra v. Thoroughbred Racing Ass'n, 1165
- Capriotti v. Chivukula, 108
- Caputo v. Boston Edison Co., 95
- Carey v. Pure Distributing Corp., 410
- Carlson v. Illinois Farmers Ins. Co., 666
- Carlson v. Okerstrom, 209
- Carrel v. National Cord & Braid Corp., 828
- Carroll Air Systems Inc. v. Greenbaum, 708
- Carsanaro v. Colvin, 509
- Carson v. Here's Johnny Portable Toilets Inc, 1189
- Carter v. Innisfree Hotel Inc., 1174
- Carter v. Kinney, 612
- Carter v. Pain Ctr. of Arizona P.C., 160
- Carter v. Reese, 582
- Casebolt v. Cowan, 707
- Cass v. Higenbotam, 144
- Cassidy v. Daily Mirror Newspapers Ltd., 1090
- Cast Art Industries LLC v. KPMG LLP*, 1078
- Castello v. County of Nassau, 889
- Castiglione v. Galpin, 81
- Castillo v. City of Las Vegas, 654
- Castro v. Melchor, 728
- Catsouras v. Department of California Highway Patrol, 1160
- Caudle v. Betts, 36
- Caviglia v. Royal Tours of Am., 203
- Chaffee v. Seslar, 715
- Champion ex rel. Ezzo v. Dunfee, 453
- Chancellor v. Pottsgrove School Dist., 107
- Chapman v. Milford Towing & Service Inc., 503
- Chapman v. Superior Ct., 200
- Charles v. Florida Foreclosure Placement Center LLC, 458
- Charlie Stuart Oldsmobile Inc. v. Smith, 654
- Charvat v. NMP LLC, 1175
- Chase Securities Corp. v. Donaldson, 446
- Chassereau v. Global Sun Pools Inc., 109
- Chauvlier v. Booth Creek Ski Holdings Inc., 872
- Chavers v. Gatke Corp., 459
- Chavez v. Desert Eagle Distributing Co. of N.M., 691

- Chenault v. Huie , 730
Chepkevich v. Hidden Valley Resort
L.P., 870
Chester v. Deep Roots Alderwood LLC,
19
Chicago B & Q. R.R. Co. v. Krayenbuhl,
283
Childers v. A.S., 71, 545
Childs v. Haussecker, 980
Chizmar v. Markie, 652
Christian v. New London, 951
Christians v. Christians, 106
Chrysler Corp. v. Batten, 983
Churchill Forge Inc. v. Brown, 918
Chuy v. Philadelphia Eagles Football
Club, 1123
Cianci v. New Times Publishing Co.,
1138
Ciofalo v. Vic Tanney Gyms, 868
Cipollone v. Liggett Group Inc., 846,
851
Citizen Publishing Co. v. Miller, 115
City of Bellmead v. Torres, 626
City of Cincinnati v. Beretta U.S.A.
Corp., 1017
City of Denton v. Paper, 614
City of Rapid City v. Boland, 190
City of Richmond Hill v. Maia, 518, 520
City of Rome v. Jordan, 594
City of San Antonio v. Peralta, 626
City of San Antonio v. Wheelabrator
Air Pollution Control Inc., 457, 952
City of Santa Barbara v. Superior Court,
873
City of Sundown v. Shewmake, 999
Clark v. Allstate Ins. Co., 63
Clark v. Darden Rest. Inc., 382
Clark v. Darden Rest. Inc., 382
Clarke v. Oregon Health Sciences Univ.,
958
Clauson v. Kempffer, 645
Clayton v. New Dreamland Roller
Skating Rink, 71
Clayton v. Richards, 1169
Cleveland v. Rotman, 472, 473, 519
Clinkscales v. Nelson Securities Inc.,
381
Coath v. Jones, 760
Coffee v. McDonnell-Douglas Corp.,
563
Coffman v. Keene Corp., 825
Cohen v. Herbal Concepts Inc., 1184
Cohen v. Lamko Inc., 732
Cohen v. Petty, 23, 283
Cohen v. Smith, 71
Cole v. Rush, 687
Cole v. Taylor, 201
Cole v. Turner, 70
Colella v. JMS Trucking Co. of Illinois,
233
Coleman v. Cintas Sales Corp., 822
Coleman v. East Joliet Fire Protection
Dist., 590, 596
Coleman v. Eddy Potash Inc., 402
Coleman v. Hoffman, 640
Coleman v. MacLennan, 1111
*Coleman v. Ramada Hotel Operating
Co.*, 862
Collins v. Lilly & Co., 443, 444
Collins v. Red Roof Inns Inc., 1143
Colon v. Wal-Mart Stores Inc., 107
Columbia/HCA Healthcare Corp. v.
Cotney, 1051
Coman v. Baker, 1021
Comeau v. Lucas, 703
Comedy Three Productions Inc. v. Gary
Saderup Inc., 1191
Community Voice Line L.L.C. v. Great
Lakes Commun. Corp., 136
Compton v. Sims, 145
*CompuServe Inc. v. Cyber Promotions
Inc.*, 136
Comunale v. Traders & General Ins.
Co., 41, 42
Comuso v. National Railroad Passenger
Corp., 99
Conant v. Rodriguez, 563
Conaway v. Roberts, 381

- Congini by Congini v. Portersville Valve Co., 698
- Conley v. Romeri, 169
- Conner v. Menard Inc., 389
- Contreras v. Crown Zellerbach Corp., 107
- Control Techniques Inc. v. Johnson, 521, 892
- Cook v. MillerCoors LLC, 687
- Cook v. Minneapolis, 422
- Cook v. Whitsell-Sherman, 30
- Cooper v. Barnickel Enterprises Inc., 736
- Cooper v. Parker-Hughey, 1144
- Corbin v. City of Philadelphia, 511
- Cordero v. Christ Hosp., 768
- Corrections v. Cowles, 949
- Cosgrove v. Grimes, 314
- Couch v. Red Roof Inns Inc., 897
- County of Dallas v. Poston, 351
- County of Sacramento v. Valley Healthcare Sys. Inc., 918
- Courvoisier v. Raymond, 174
- Cowan v. Hospice Support Care Inc., 963
- Coward v. Baddeley, 70
- Cowles Publ'g Co. v. State Patrol, 1155
- Cox Broadcasting Corp. v. Cohn, 1158
- Cox Enterprises Inc. v. Nix, 1090
- Cox Texas Newspapers v. Wootten, 94
- Cox v. Shelter Ins. Co., 209
- Cox v. Stretton, 969
- Craig v. Driscoll, 692
- Credit Alliance Corp. v. Arthur Andersen & Co., 1080, 1082
- Creditwatch Inc. v. Jackson, 108
- Cremeans v. Willmar Henderson Mfg. Co., 890
- Crews v. Hollenbach, 890
- Crisci v. Security Insurance Co. of New Haven*, 39
- Crosland v. New York Transit Auth., 589
- Crown Cork & Seal Co. v. Hires Bottling of Chicago, 1058
- Crump v. Beckley Newspapers Inc., 1178
- Crussell v. Electrolux Home Products Inc., 729
- Cruz ex rel. Alvarez v. City of Philadelphia, 91
- Cubby Inc. v. CompuServe Inc., 1100
- Cuesta v. Immaculate Conception Roman Cath. Church, 879
- Cuffy v. City of New York, 594
- Cummins v. Lewis County, 594
- Cunningham v. Braum's Ice Cream & Dairy Stores, 572
- Curl v. Key, 1051
- Currier v. Washman LLC, 613
- Curtis Publishing Co. v. Butts, 1137
- Customer Co. v. City of Sacramento, 192
- Czajkowski v. Meyers, 90
- D.S.A. Inc. v. Hillsboro Indep. Sch. Dist., 1074
- Daily Times-Democrat Co. v. Graham, 1160
- Dallas Morning News Inc. v. Hall, 1150
- Dalury v. S-K-I Ltd., 871
- Daly v. General Motors Corp., 893
- D'Amico v. Christie, 689
- Daniczek v. Spencer, 98
- Daniel v. Reeder, 691
- Darby & Darby P.C. v. VSI Int'l Inc., 315
- Darryl A. v. Christopher P., 580
- Daubert v. Merrell Dow Pharmaceuticals Inc., 826
- Davies v. Butler*, 158, 297, 383, 708
- Davies v. Mann, 858
- Davis & Alcott Co. v. Boozer, 119
- Davis v. Baugh Indus. Contractors Inc., 524
- Davis v. Devereux Foundation*, 755
- Davis v. Equibank, 128
- Davis v. Protection One Alarm Monitoring Inc., 569

- Davis v. Richardson, 81
Davis v. The Tennessean, 1125
Davis v. Wal-Mart Stores Inc., 408
Davison v. Snohomish County, 286
Day v. Heller, 716
Dayton Hudson Corp. v. Altus, 125
De Anda v. Blake, 63
De Blanc v. Jensen, 580
De Gregorio v. Malloy, 295, 346
De Long v. County of Erie, 592
De Luca v. Bowden, 62
De Vera v. Long Beach Public Transportation Co., 535
Dean v. Young, 401
Decorso v. Watchtower Bible and Tract Society of N.Y., 679
Del Lago Partners Inc. v. Smith, 699
Delao v. Carlson, 280
Dellapenta v. Dellapenta, 901, 943
Delta Airlines Inc. v. Townsend, 690
DeMay v. Roberts, 166, 170
Demelus v. King Motor Co. of Fort Lauderdale, 272
Dempsey v. Nat. Enquirer, 1168
Denbo v. DeBray, 967
Denton v. Chittenden Bank, 1176
Denton v. Paper, 614
DePass v. United States, 427
Depue v. Flateau, 194, 627
Derdiarian v. Felix Contracting Corp., 501
Dermatossian v. New York City Transit Auth., 388
Desjarlais v. USAA Ins. Co., 212
Desnick v. ABC, 994
Dewey v. Lutz, 1053
Di Ponzio v. Riordan, 490
Dias v. Brigham Med. Assoc., 743
Diaz v. Oakland Tribune Inc., 1158
DiCenzo v. Izawa, 293
DiGeronimo v. Fuchs, 726
Dillard Dept. Stores v. Gonzalez, 108
Dillard Dept. Stores Inc v. Silva, 187
Dillon v. Legg, 660, 661, 667, 683
Dillon v. Twin State Gas & Elec. Co., 431
Dilworth v. Dudley, 1141
DiMarco v. Lynch Homes-Chester County Inc., 325
Dimick v. Schiedt, 209
Dinsdale Constr. LLC v. Lumber Specialties Ltd., 1073
Distinctive Printing & Packaging Co. v. Cox, 245
District of Columbia v. Brown, 366
Dodge-Farrar v. American Cleaning Services Co. Inc., 413
Doe A. v. Diocese of Dallas, 986
Doe Parents No. 1 v. State Dept. of Educ., 659
Doe v. Archdiocese of Cincinnati, 734, 980
Doe v. Associated Press, 1047
Doe v. Corporation of Pres. of Church of Jesus Christ of Latter-Day Saints, 115
Doe v. Holt, 943
Doe v. Issacs, 243
Doe v. Liberatore, 679
Doe v. Marion, 558
Doe v. Maskell, 977
Doe v. Meth. Hosp., 1158
Doe v. Moe, 880
Doe v. Oregon Conference of Seventh-Day Adventists, 545
Doe v. Roe, 16, 978
Doe v. SexSearch.com, 666
Doe v. TCI Cablevision, 1184, 1188
Doherty v. Merck & Co. Inc., 716
Donohue v. Copiague Union Free Sch. Dist., 321
Dorsey v. Apple Computers Inc., 967
Dougherty v. Stepp, 992
Dove Audio Inc. v. Rosenfeld Meyer & Susman, 1149
Dover Elevator Co. v. Swann, 383
Dowdle Butane Gas Co. v. Moore, 407

- Downs v. E.O.M. Entertainment Inc.,
616
Drabek v. Sabley, 176
Draper v. Aircoc Inc., 890
Drugs. Mut. Pharm. Co. Inc. v. Bartlett,
851
Dube v. Lanphear, 698
Dubinsky v. United Airlines Master
Exec. Coun., 1142
Ducheneaux v. Miller, 1053
Duffy v. Irons Area Tourist Ass'n., 626
Duge v. Union Pac. R. Co., 708
Dugger v. Arredondo, 203
Dun & Bradstreet Inc. v. Greenmoss
Builders Inc., 1095, 1106, 1125
Duncan v. Cessna Aircraft Co., 925
Dunlap v. Dunlap, 936
Dunlea v. Dappen, 977
Dunleavy v. Miller, 292
Dunphy v. Gregor, 665, 673
Duplechain v. Turner, 179
Dupont v. Aavid Thermal Tech. Inc.,
545
Durbin v. City of Winnsboro, 35
Dwyer v. American Express Co., 1166,
1188
Dynas v. Nagowski, 702
Dzenutis v. Dzenutis, 936
Dziubak v. Mott, 957
Eads v. Marks, 42
Eads v. Wolpoff & Abramson LLP, 110
Eason v. Cleveland Draft House, 858
East River Steamship Corp. v. Transam-
erica Delaval, 830
Ebel v. Eli Lilly & Co., 828
Economopoulos v. A. G. Pollard Co., 1099
Eddy v. Brown, 1165
Edwards v. Basel Pharmaceuticals, 828
Edwards v. Honeywell Inc., 499
Edwards v. Max Thieme Chevrolet Co.,
144
Edwards v. National Audubon Soc'y
Inc., 1148
Eilers v. Coy, 134
Eisel v. Board of Educ., 558
Elam v. Alcolac Inc., 215
Elbaor v. Smith, 927
Elliott v. Elliott, 653
Ellis v. City of Dallas, 148
Employers Casualty Co. v. Tilley, 46
Endresz v. Friedberg, 729
Ennabe v. Manosa, 689
Enright v. Groves, 123
Entex v. Gonzalez, 533
Entwistle v. Draves, 346
Environmental Network Corp. v.
Goodman Weiss Miller L.L.P., 316
Ernst & Young L.L.P. v. Pac. Mut. Life
Ins. Co., 1078
Escamilla v. Shiel Sexton Company
Inc., 239
Escola v. Coca Cola Bottling Co., 438,
794
Eskin v. Bartee, 662
Eskin v. Castiglia, 895
Esposito-Hilder v. SFX Broadcasting
Inc., 115
Estate of Gordon-Couture v. Brown,
626
Estate of Lambert v. Fitzgerald, 1066
Estate of Re v. Kornstein Veisz &
Wexler, 424
Etan Indus. Inc. v. Lehmann, 981
Ethyl Corp. v. Daniel Constr. Co., 870
Euclid v. Ambler Realty Co., 1000
Ex parte BASF Const. Chemicals LLC,
567
Exxon Shipping Co. v. Baker, 253
Exxon v. Sofec Inc., 521
F.F.P. Operating Partners L.P. v.
Duenez, 691
F.G. v. MacDonell, 675
Fairview Ritz Corp. v. Borough of
Fairview, 950
Faniel v. Chesapeake & Potomac
Telephone Co., 122
Farias v. Mr. Heater Inc., 829

- Farina v. Pan American World Airlines Inc., 778
Farley v. Sartin, 726
Farm Bureau Ins. Group v. Phillips, 303
Farm Credit Bank of St. Louis v. Whitlock, 105
Farmers Alliance Mut. Ins. Co. v. Salazar, 38
Farmers Ins. Group v. County of Santa Clara, 747
Farris v. Bd. of County Comm’r, 109
Farwell v. Keaton, 544
Fassett v. Delta Kappa Epsilon, 698
Fay v. Thiel College, 575
Fehrenbach v. O’Malley, 980
Felder v. Physiotherapy Assoc., 238
Feldman v. Lederle Labs., 842
Feltmeier v. Feltmeier, 99
Feres v. United States, 949
Ferguson v. Lieff Cabraser Heimann & Bernstein, 317
Fernandez v. Walgreen Hastings Co., 213, 672
Ferris v. Benbow Chem. Packaging Inc., 366
Fetick v. American Cyanamid Co., 919
Fidelity Mortgage Co. v. Cook, 1051
Field v. Philadelphia Elec. Co., 71, 75
Figueiredo-Torres v. Nickel, 116
Filiberto v. Herk’s Tavern Inc., 544
Fineran v. Pickett, 665
Firemen’s Ins. Co. v. Jones, 1065
Firestone v. Firestone, 651, 1125
First Assembly of God v. Texas Utilities, 470, 595
Firth v. State, 1103
Fischer v. Famous-Barr Co., 120
Fisher v. Carrousel Motor Hotel Inc., 73
Fisk v. City of Kirkland, 589
Fitzpatrick v. Copeland, 666
Fitzpatrick v. Natter, 331
Flaherty v. Weinberg, 313
Flamm v. American Assoc. of Univ. Women, 1141
Fleck v. KDI Sylvan Pools Inc., 822, 983
Fleischer v. Hebrew Orthodox Congregation, 616
Fletcher v. Dorchester Mut. Ins. Co., 407
Florence v. Goldberg, 589
Flores v. Exprezit! Stores 98-Georgia LLC, 690
Florida B. v. Christensen, 1085
Florida Dept. of Corrections v. Abril, 653
Florida Publ’g Co. v. Fletcher, 994
Florida Star v. B.J.F., 1158
Flowers v. Carville, 1100, 1124
Flowers v. Rock Creek Terrace Ltd. Partnership, 885
Floyd v. Park Cities People Inc., 1160
FMC Corp. v. Capital Cities/ABC Inc., 154
Folz v. New Mexico, 653
Ford Motor Co. v. Ledesma, 496
Ford Motor Co. v. Wagoner, 529
Ford v. Revlon Inc., 109
Fordham v. Oldroyd, 887
Forsher v. Bugliosi, 1158
Foster v. Costco Wholesale Corp., 620, 622
Foster v. de Cholnoky, 728
Foster v. Duggin, 318
Fournell v. Usher Pest Control Co., 660
Fox v. Hayes, 212
Fraguglia v. Sala, 173
Franklin Med. Assoc. v. Newark Pub. Schools, 458
Franklin Prescriptions Inc. v. New York Times Co., 1123
Fredeen v. Stride, 146, 654
Freeman v. Eichholz, 616
Fricke v. Owens-Corning Fiberglass Corp., 157
Friedman v. Merck & Co., 651
Frye v. City of Detroit, 906
Frye v. Frye, 826, 906
Frye v. United States, 826

- Fuentes v. Alecio, 200
Fulk v. Roberts, 124
Fuller v. Preis, 518
G.M.M. ex rel. Hernandez-Adams v. Kimpson, 240
Gaines-Tabb v. ICI Explosive USA Inc., 508
Galayda v. Lake Hosp. Sys. Inc., 237
Gallara v. Koskovich, 509
Gallimore v. Children's Hosp. Med. Ctr., 213
Galveston H. & S.A. Ry. Co. v. De Groff, 1022
Gambill v. Stroud, 325
Ganim v. Smith & Wesson Corp., 1021
Gantt v. Security USA, 36
Garcia v. Joseph Vince Co., 434
Garcia v. Windley, 424
Garland Grain Co. v. D-C Home Owners Improvement Ass'n, 999, 1022
Garr v. Alden, 1059
Garratt v. Dailey, 12, 15, 49
Garrison v. State of Louisiana, 1115
Gates v. Jenson, 341
Gaulding v. Celotex Corp., 441, 442
Gause v. Smithers, 788
Gavcus v. Potts, 990
General Mills Restaurants Inc. v. Texas Wings Inc., 992
Genovay v. Fox, 632
George v. City of Houston, 1021
Gerber v. Veltri, 70
Gertz v. Robert Welch Inc., 1106, 1117, 1126, 1128, 1137, 1180, 1183
Gibbs v. Ernst, 734
Gibbs v. Jackson, 772
Gibson v. American Cyanamid Co., 442
Gibson v. Brewer, 112
Gibson v. Leonard, 885
Gilchrist Timber Co. v. ITT Rayonier Inc., 1075
Gilmer v. Ellington, 567
Ginther v. Domino's Pizza Inc., 745
Giovine v. Giovine, 101, 106, 981
Gipson v. Kasey, 344
Glanzer v. Shepard, 1083
Gleitman v. Cosgrove, 719
Glenmar Cinestate Inc. v. Farrell, 743
Glidden v. Syzbiak, 61
Gliemmo v. Cousineau, 296
GNOC Corp. v. Aboud, 692
Goady v. Utopia Home Care Agency, 209
Goar v. Village of Stephen, 522
Goddard v. Boston & Maine R.R., 376
Goff v. Taylor, 56
Goldberg v. Florida Power & Light Co., 595
Goldberg v. Housing Auth. of Newark, 694
Golden Bear Distrib. Sys. v. Chase Revel Inc., 1113
Golden Spread Council Inc. v. Akins, 566
Golden v. Mullen, 1144
Goldfuss v. Davidson, 182
Goldsmith v. Howmedica Inc., 978
Goller v. White, 936
Gonsalves v. Nissan Motor Corp., 1102
Gonzales v. City of Bozeman, 595
Gonzalez v. New York City Housing Authority, 228
Gonzalez v. Otis Elevator Co., 388
Goodwin v. Hare, 887
Goodwin v. Kingsmen Plastering Inc., 969
Goodwin v. Reilley, 778
Gorman v. McMahan, 116
Goss v. Allen, 301
Gould v. American Family Mut. Ins. Co., 304
Graceland Corp. v. Consol. Laundries Corp., 1019
Graham v. Freese & Nichols Inc., 568
Grandeson v. International Harvester Credit Corp., 654
Grant v. Reader's Digest Ass'n Inc., 1088

- Graubard Mollen Dannett & Horowitz v. Moskovitz, 1062
- Graves v. Diehl, 1016
- Graves v. Estabrook, 665
- Graves v. Trudell, 182
- Graves v. Warner Bros., 537
- Gravis v. Physicians & Surgeons Hospital, 164
- Greco v. United States, 724
- Green v. AlphaPharma Inc., 421
- Green v. Donroe, 118
- Green v. Ensign-Bickford Co., 777
- Greenbelt Cooperative Publishing Assn. Inc. v. Bresler, 1137
- Greenhalgh v. Casey, 1141
- Greenwood v. Anderson, 944
- Greenwood v. Mitchell, 223
- Gregory v. Clive, 589
- Gregory v. Cott, 58, 305
- Greycas Inc. v. Proud, 1067
- Grisham v. Philip Morris U.S.A. Inc., 978
- Gross v. Sweet*, 866
- Grosz v. Museum of Modern Art, 967
- Grotheer v. Escape Adventures, 97
- Grover v. Stechel, 546
- GTE Southwest Inc. v. Bruce, 95, 746
- Guarina v. Bogart, 1000
- Guccione v. Hustler Magazine Inc., 1093
- Guckeen Farmers Elevator Co. v. South Soo Grain Co., 143
- Guckian v. Fowler, 209
- Gudin v. 6108 Hudson Ave. LLC, 325
- Guille v. Swan, 777
- Guinn v. Church of Christ of Collinsville, 115
- Gulf Refining Co. v. Williams*, 276
- Gum v. Dudley, 932
- Gushlaw v. Milner, 707
- Gustafson v. City of Austin, 1093
- Gutierrez de Martinez v. Lamagno, 956
- Gutman v. Klein, 407
- Gyrc v. Dayton-Hudson Corp., 243
- H&S Homes L.L.C. v. McDonald, 748
- Haben v. Anderson, 160
- Habershaw v. Michaels Stores Inc., 376
- Hackbart v. Cincinnati Bengals, 877
- Haehl v. Wabash R. Co., 741
- Haft v. Lone Palm Hotel, 440
- Hagan v. Coca-Cola Bottling Co., 659
- Hagberg v. California Federal Bank FSB, 128
- Hagebak v. Stone, 1145
- Hakimoglu v. Trump Taj Mahal Assoc., 692
- Hakkila v. Hakkila, 100
- Hale v. Hale, 612, 936
- Hall v. E. I. Du Pont de Nemours & Co. Inc., 437
- Hall v. Hilbun, 321
- Hall v. May Stores Co., 114
- Hall v. Post, 1158
- Hall v. Toreros II Inc., 688
- Hamilton v. Ford Motor Credit Co., 91, 110
- Hamilton v. Martinelli & Assoc., 884
- Hammond v. Wal-Mart Stores Inc., 380
- Hanberry v. Hearst Corp., 1059
- Hancock v. Variyam, 1105
- Hannah v. Heeter, 406
- Hardy v. Southwestern Bell Telephone Co., 431
- Hariri v. Amper, 1150
- Harper v. Illinois Cent. Gulf R.R., 666
- Harrington v. Brooks Drugs Inc., 213
- Harrington v. Hall, 64, 182
- Harris v. Anderson County Sheriff's Office*, 27
- Harris v. Fulton-DeKalb Hosp. Auth., 685
- Harris v. Jones*, 85, 96
- Harris v. McCray, 957
- Harrison v. Hardin Cty. Comm. Unit Sch. Dist., 949
- Hart v. Electronic Arts Inc., 1191
- Hart v. Geysel, 171

- Harte-Hanks Communications Inc. v. Connaughton, 1114, 1115
- Hartford Accident and Indemnity Co. v. Village of Hempstead, 257
- Harting v. Dayton Dragons Professional Baseball Club, 878
- Haryanto v. Saeed, 125
- Haselhorst v. State, 509, 665
- Hatch v. O'Neill, 62
- Haugh v. Jones & Laughlin Steel Corp., 613
- Havner v. E-Z Mart Stores Inc., 413
- Hawkins v. Harris, 1143
- Hawkins v. Palmer, 516
- Haybeck v. Prodigy Services Co., 746
- Hayes v. Malkan, 639
- Haygood v. De Escabedo, 220
- Hazen v. Municipality of Anchorage, 402
- Hearn v. City of Overland Park, 643
- Heath v. La Mariana Apts., 350
- Hedgepeth v. Whitman Walker Clinic, 667
- Heiner v. Moretuzzo, 652
- Heintz v. Jenkins, 110
- Heinz v. Heinz, 569
- Helpend v. Southern California Rapid Transit District*, 217
- Helling v. Carey*, 340, 341
- Hellums v. Raber, 458
- Helms v. Church's Fried Chicken Inc., 634
- Henderson v. Wellman, 109, 1143
- Henebema v. Raddi, 950
- Hennessey v. Pyne, 52, 995
- Henrickson v. Sebanc, 53
- Henriksen v. Cameron, 101
- Henry v. Houston Lighting & Power Co., 496
- Henson v. Reddin*, 140
- Herceg v. Hustler Magazine Inc., 463
- Herman v. Wesgate*, 450, 462, 904
- Herrera v. Quality Pontiac, 509
- Herron v. Anigbo, 967
- Herzfeld v. Herzfeld, 942, 943
- Hester v. Brown, 119
- Hewellette v. George, 935
- Hewitt v. Allen, 317
- Hickman v. Carven, 983
- Hicks v. Korean Airlines Co., 708
- Hicks v. Nunnery, 318
- Highway Trailer Co. v. Janesville Electric Co., 951
- Hildebrand v. Hildebrand, 977
- Hilen v. Hays*, 858
- Hill v. City of Glenwood, 296
- Hill v. Edmonds, 416
- Hill v. Kimball, 682
- Hills v. McGillvrey, 527
- Hinish v. Meier & Frank Co., 1188
- Ho v. University of Texas at Arlington, 1052
- Hockema v. J.S., 213
- Hodgeden v. Hubbard, 184
- Hoffman v. Board of Educ., 321
- Hoffman v. Capital Cities/ ABC Inc., 1191
- Hoffman v. Eppers, 70
- Hoffman-La Roche Inc. v. Zeltwanger, 108
- Hogan v. Herald Co., 1148
- Hojnowski v. Vans Skate Park, 873
- Holbert v. Noon, 79
- Holder v. Mellon Mortgage Co., 271
- Holguin v. Sally Beauty Supply Inc., 188
- Holiday Inns Inc. v. Shelburne, 634
- Holt v. Rowell, 654
- Holytz v. City of Milwaukee, 947, 950
- Homac Corp. v. Sun Oil Co., 470
- Homeland Express L.L.C. v. Seale, 510
- Hood v. Naeter Brothers Publishing Co., 95
- Hopewell v. Vitullo, 1142
- Hopkins v. Fox & Lazo Realtors, 634
- Hoppe v. Hoppe, 943
- Horne v. Peckham, 315
- Horner v. Sani-Top Inc., 232
- Horvath v. Ish, 880

- Horvath v. Lindenhurst Auto Salvage Inc., 783
- Hosein v. Checker Taxi Co. Inc., 350
- Hotze v. Miller, 1116
- Hougum v. Valley Mem. Homes, 1175
- Hoult v. Hoult, 977
- Houston Gas & Fuel Co. v. Harlow, 1000
- Hovermale v. Berkeley Springs Moose Lodge, 627
- Howard v. Univ. of Med., 332
- Howell v. New York Post, 1187
- Hower v. Ulrich, 63
- Hoyal v. Pioneer Sand Company Inc., 242
- Huddleston v. Union Rural Elec. Ass'n, 754
- Hudson v. Craft, 171
- Huggins v. Citibank N.A., 553
- Hughes v. Klein, 319
- Hughes v. Seven Springs Farm Inc., 881
- Hughes v. Stusser, 1049
- Humphrey v. Glenn, 604
- Humphrey v. Twin State Gas & Electric Co.*, 603
- Humphreys-Mexia Co. v. Arsenaux, 995
- Hunt Bros. Co. v. San Lorenzo etc. Co., 43
- Hunter v. Board of Educ., 321
- Hurst v. East Coast Hockey League Inc., 878
- Hurt v. Philadelphia Housing Auth., 442
- Hustler Magazine v. Falwell, 114, 1152
- Hutcherson v. Alexander, 1000
- Hutchings v. Childress, 219
- Hutton v. Logan, 515
- Hyde v. City of Columbia, 465
- Hyde v. Roman Catholic Bishop of Providence, 977
- Hyer v. Pittsburgh Corning Corp., 983
- Hymowitz v. Eli Lilly and Co.*, 442, 986
- Hyson v. White Water Mt. Resorts, 870
- I de S et ux. v. W de S, 67
- IDA Moorhead Corp. v. Leach, 919
- Ileto v. Glock Inc., 1017
- Illinois Central Railroad Co. v. Bloodworth, 277
- Imig v. Beck, 381
- In McPeake v. William T. Cannon Esq. P.C., 519
- In re 91st Street Crane Collapse Litig., 228
- In re Air Crash Disaster Near Chicago on May 25 1979, 241
- In re Air Crash Disaster Near New Orleans, 654
- In re Arbitration Between Polemis and Furness Withy & Co. Ltd., 472
- In re Estate of Folcher, 1059
- In re Facebook Internet Tracking Litig., 1176
- In re Galbasini, 752
- In re Haw. Fed. Asbestos Cases, 842
- In re Lead Paint Litigation, 1027
- In re Marriage of Tigges*, 1168
- In re Matthys, 349
- In re Methyl Tertiary Butyl Ether (MTBE) Products Liab. Litig., 447
- In re Nickelodeon Consumer Priv. Litig., 1176
- In re S.K.H., 95
- In re Spencer, 148
- In re Starlink Corn Products Liability Litig., 1030
- In re Tylenol (Acetaminophen) Mktg. Sales Practices and Products Liab. Litig., 259
- In Tayar v. Camelback Ski Corp. Inc., 873
- Indiana Harbor Belt Railroad v. American Cyanamid Co., 778
- Inkel v. Livingston*, 617
- Inland Steel v. Pequignot, 351, 778
- Intel Corp. v. Hamidi, 139
- International U. v. Garner, 1160
- Irwin v. Ashurst, 1143
- Irwin v. Town of Ware, 708

- Isaacs v. Huntington Mem. Hosp., 630
Iseberg v. Gross, 533
Italian Cowboy Partners Ltd. v. Prudential Ins. Co., 1068
Ivancic v. Olmstead, 639
J.C. Penney Co. Inc. v. Chavez, 376
J.S. v. R.T.H., 546
Jackson Jordan Inc. v. Leydig Voit & Mayer, 981
Jackson v. AEG Live LLC, 567
Jackson v. H.H. Robertson Co. Inc., 400
Jackson v. Nestle-Beich Inc., 842
Jackson v. Ray Kruse Constr. Co., 645
Jacobs v. Halper, 1046
Jacobsen v. Allstate Ins. Co., 650
Jacobson v. Dahlberg, 915
Jacobus v. Trump, 1087
Jacque v. Steenberg Homes Inc., 994
Jagger v. Mohawk Mountain Ski Area Inc., 881
Jaillet v. Cashman, 1083
James v. Gannett Co. Inc., 1089
James v. Jackson, 542
James v. Lieb, 660
James v. Meow Media Inc., 464
Janice H. v. 696 N. Robertson LLC, 627
Jarrard v. UPS Inc., 95
Jarrett v. Jones, 667
Jasko v. Woolworth Co., 380
Javier v. City of Milwaukee, 952
Jaworski v. Kiernan, 880
Jea v. Cho, 420
Jean v. Commonwealth, 596
Jefferson County Sch. Dist. v. Moody's Investor's Services Inc., 1142
Jelly v. Dabney, 173
Jensen v. State, 1167
Jews For Jesus Inc. v. Rapp, 1183
Jimenez v. Superior Court, 831
John B. v. Superior Court, 19
John Doe 2 v. Associated Press, 1158
John Doe BF v. Diocese of Gallup, 337
John Doe v. Archdiocese of Milwaukee, 1040
John Doe v. Paul Arts M.D., 652
John Morrell & Co. v. Royal Caribbean Cruises, 619
John R. v. Oakland Unified School District, 748
Johnson & Johnson v. Aetna Cas. & Surety Co., 257
Johnson County Sherriff's Posse Inc. v. Endsley, 645
Johnson v. Barnes & Noble Booksellers Inc., 125
Johnson v. Jacobs, 505
Johnson v. Jamaica Hosp., 667
Johnson v. Johnson Chem. Co. Inc., 824
Johnson v. Minnesota, 532
Johnson v. New York, 655
Johnson v. Souza, 576
Johnson v. United Parcel Services Inc., 122
Johnson v. Weedman, 140
Johnson v. West Va. Univ. Hosp., 651
Johnson v. Woman's Hospital, 89
Johnstone v. City of Albuquerque, 518
Jones v. Baisch, 746
Jones v. Billings, 607
Jones v. Clinton, 1143
Jones v. Harris, 85, 96
Jones v. Howard University Inc., 653
Jones v. Owings, 642
Jones v. Secord, 549
Jones v. Shipley, 68, 79
Jones v. Southwestern Newspapers Corp., 357
Jones v. Thomas, 895
Joyce v. State Dept. of Corrections, 543
Judd v. Walker, 1066
Judge Hand in Conway v. O'Brien, 280
Judge v. Saltz Plastic Surgery P.C., 1164
Juhl v. Airington, 458
Juisti v. Hyatt Hotel Corp., 482
Jurado v. Western Gear Works, 845
Jurs v. City of Omaha, 31
Jury v. Giant of Md. Inc., 188
Jutzi-Johnson v. U.S., 210

- Juvenalis v. District of Columbia, 858
K.H. v. J.R., 546
K.M. v. Alabama Dept. of Youth Services, 107
Kampen v. American Isuzu Motors Inc., 845
Kaneko v. Hilo Coast Processing, 892
Kapres v. Heller, 698
Kassama v. Magat, 725
Kassis v. Lease and Rental Management Corp., 533
Katapodis v. Brooklyn Spectator Inc., 1088
Katko v. Briney, 179
Keel v. Banach, 725
Keel v. Hainline, 59
Keene v. Brigham and Women's Hosp. Inc., 964
Keeton v. Hustler Mag. Inc., 1104
Kellermann v. McDonough, 545
Kelley v. Bonney, 1143
Kelly v. Gwinnell, 692
Kelly v. Storey County Sheriff, 193
Kemp v. Estate of Crabtree, 259
Kennedy v. Wal-Mart Stores, 375
Kent v. Commonwealth, 524
Kent v. Gulf States Utilities Co., 780
Kentucky Fried Chicken v. Superior Ct., 634
Kentucky River Med. Ctr. v. McIntosh, 620
Kenyon v. Hospital San Antonio, 582
Kersh v. Heffner, 34
Kessler v. Mortenson, 608
Keyes v. Tallahassee Mem. Reg. Med. Ctr., 381
Khan v. Houston NFL Holdings LP, 760
Kilduff v. Adams Inc., 1073
Kilian v. Doubleday & Co. Inc., 1093
King v. Northeast Security Inc., 589
King v. Phillips, 476
Kingsbury v. Smith, 718
Kinsman v. Unocal Corp., 645
Kircher v. City of Jamestown, 594
Kirk v. Denver Publishing Co., 258
Kissinger v. Mannor, 36
Kituskie v. Corbman, 318
Kleinknecht v. Gettysburg College, 543
Kline v. 1500 Massachusetts Ave. Apartment Corp., 538
Klingerman v. Sol Corp., 691
Klopp v. Wackenhutt Corp., 620
Kmart Corp. v. Bassett, 388
Knierim v. Izzo, 114, 650
Knorpp v. Hale, 612
Knox v. Anderson, 1059
Kobza v. Kutac, 959
Koch v. Southwestern Elec. Power Co., 275
Koepnick v. Sears Roebuck & Co., 138
Koepfel v. Speirs, 1171
Koestler v. Pollard, 116
Kolegas v. Heftel Broad. Corp., 1182
Komornik v. Sparks, 243
Konick v. Berke Moore Co., 743
Kozup v. Georgetown Univ., 162
Kramer Service Inc. v. Wilkins, 414
Kratz ex rel. Kratz-Spera v. MedSource Community Services Inc., 980
Krebs v. Charlotte Sch. of L. LLC, 321
Kremen v. Cohen, 149
Krivijanski v. Union R. Co., 895
Kubert v. Best, 451
Kuechle v. Life's Companion P.C.A. Inc., 1101, 1145
Kumho Tire Co. v. Carmichael, 827
Kurowski v. Town of Chester, 626
Kuzmicz v. Ivy Hill Park Apts. Inc., 638
L.A. Fitness Intern. LLC v. Mayer, 537
L.S. Ayres & Co. v. Hicks, 563
La Bruno v. Lawrence, 53
La Page v. Smith, 200
La Raia v. Superior Court, 563
Labaj v. VanHouten, 771
LaBrier v. Anheuser Ford Inc., 97
Ladd v. Honda Motor Co. Ltd., 1077
Lahr v. Fulbright & Jaworski L.L.P., 108
LaMartiniere v. Allstate Ins. Co., 1175

- Lamb v. Rizzo, 1125
Lambert v. Parrish, 516
Lambertson v. United States, 49
Lambeth v. Media General Inc., 567
Lambrecht v. Schreyer, 75
Lamprecht v. Schluntz, 381
Lance v. Senior, 633
Landers v. East Texas Salt Water Disposal Company, 906
Langan v. Bellinger, 998
Langan v. Valicopters Inc., 777
Langeslag v. KYMN Inc., 94, 95
Langford v. Shu, 64
Langle v. Kurkul, 697
Lapre v. Kane, 1026
Larsen v. Banner Health System, 685
Larsen v. Philadelphia Newspapers Inc., 1179
Larson v. City of Chicago, 639
Larson v. Dunn, 95
Larson-Murphy v. Steiner, 772
Laser v. Wilson, 543
Lasley v. Combined Transport Inc., 298
Lauer v. City of N.Y., 594
Lauritzen v. Lauritzen, 544
Lavigne v. Chase, 318
Lavin v. Conte, 818
Law v. Superior Court, 900
Lawson v. Citizens & S. Nat'l Bank, 1050
Lawson v. Mitsubishi Motor Sales of Am. Inc., 392
Lazard Freres & Co. v. Protective Life Ins. Co., 1067
Leaders v. Dreher, 514
Lear Siegler Inc. v. Perez, 510
LeBlanc v. Skinner, 1105
Lebron v. Gottlieb Memorial Hosp., 263
Lechuga v. Southern Pac. Transp. Co., 614
Lee v. Farmer's Rural Elec. Co-op. Corp., 367
Lee v. GNLV Corp., 537
Lee v. Nationwide Mut. Ins. Co., 200
Lehner v. Pittsburgh Rys. Co., 510
Leichtman v. WLW Jacor Comm. Inc., 81
Leith v. Frost, 147
Lemmerman v. Fealk, 977
Leo v. General Elec. Co., 1019
Leppke v. Segura, 707
Lerner v. Laufer, 314
Lesser v. Neosho County Comm. Coll., 78, 162
Letter Carriers v. Austin, 1138
Leuer v. Johnson, 434
Leung v. Verdugo Hills Hospital, 919
Levine v. The Kramer Group, 1047
Levy v. Franks, 94
Lewis v. Westinghouse Electric Corporation, 649
Li v. Yellow Cab Co., 860
Liberty Mut. Ins. Co. v. Steadman, 98
Lickteig v. Kolar, 945
Life Ins. Co. of Ga. v. Johnson, 254, 261
Liley v. Cedar Springs Ranch Inc., 772
Lilya v. Greater Gulf State Fair Inc., 620
Limestone Products Distrib. Inc. v. McNamara, 744
Lincoln General Ins. Co. v. Detroit Diesel Corp., 831
Linden v. CNH America LLC, 803
Linder v. Bidner, 545
Linebaugh v. Berdish, 34
Lipman v. Atlantic Coast Line R. Co., 97
Liriano v. Hobart, 822
Lisa M. v. Henry Mayo Newhall Mem. Hosp., 752
Litchford v. Hancock, 862
Livesay v. Ambassador Operating Co., 173
LLMD of Mich. Inc. v. Jackson-Cross Co., 327
LM v. United States, 567
Lomando v. United States, 964
Lompe v. Sunridge Partners, 242
Lonzo v. Lonzo, 933

- Loomis v. Terry, 284
Lopez v. Surchia, 174
Lord v. Fogcutter Bar, 200
Loveridge v. Chartier, 34
Lovinger v. Hix Green Buick Co., 143
Low v. Park Price Co., 371
Lowe v. Philip Morris USA Inc., 216
Lozoya v. Sanchez, 213, 671
Lucas v. Hamm, 313
Lucas v. Hesperia Golf & Country Club, 413
Lucchesi v. Frederic N. Stimmell M.D., 93
Lucero v. Richardson & Richardson Inc., 626
Ludman v. Davenport Assumption High School, 620
Luensmann v. Zimmer-Zampese & Assoc., 999
Lugosi v. Universal Pictures, 1190
Lundman v. McKown, 544
Lussier v. Bessette, 455
Lybrand v. Trask, 94
Lyles v. Medtronic Sofamor Danek USA Inc., 393
Lyons v. Midnight Sun Transp. Servs. Inc., 292
MacDermid v. Discover Financial Services, 109, 517
MacGregor v. Walker, 574
MacGregor v. Watts, 146
Mack Trucks Inc. v. Conkle, 254, 258
Mack v. Carmack, 728
MacPherson v. Buick Motor Co., 790, 794
Maddox v. Townsend and Sons Inc., 619
Maddux v. Donaldson, 906, 908
Maddy v. Vulcan Materials Co., 996
Magnaleasing Inc. v. Staten Is. Mall, 1058
Mahowald v. Minnesota Gas Co., 390
Majca v. Beekil, 651
Maldonado v. Gateway Hotel Holdings L.L.C., 754
Malicki v. Doe, 679
Malik v. Carrier Corp., 686
Mandell v. Pivnick, 1015
Mangual v. Berezinsky, 395
Manning v. Metropolitan Life Ins., 108
Marathon Corp. v. Pitzner, 419
Marcano v. Northwestern Chrysler-Plymouth Sales Inc., 120
Marcum v. Bowden, 698
Marcus v. Liebman, 122
Mark v. Oregon, 1021
Marlow v. City of Sisters, 168
Marmelstein v. Kehillat New Hempstead, 679
Marquay v. Eno, 343, 542
Marsallis v. LaSalle, 576
Marshall v. Burger King Corp., 631
Marshall v. Celotex Corp., 441
Marshall v. Nugent, 477, 496
Marshall v. Ranne, 889
Martin Luther King Ctr. for Soc. Change Inc. v. Am. Heritage Products Inc., 1190
Martin v. Abbott Labs., 443, 444
Martin v. Herzog, 355
Martin v. Petta, 381
Martinez Management Inc. v. Caston, 154
Martino v. Wal-Mart Stores Inc., 406
Masters v. New York Central R. Co., 862
Mathis v. Cannon, 1133
Matsuyama v. Birnbaum, 424, 426
Matthews v. Amberwood Associates Ltd. Partnership Inc., 641
Mauri v. Smith, 1167
Maussner v. Atlantic City Country Club, 342, 566
Mawe v. Piggot, 1088
Mayes v. LIN Television of Tex. Inc., 1167
McCahill v. New York Transp. Co., 432, 480
McClenahan v. Cooley, 470
McClure v. Rich, 612

- McClymont v. Morgan, 292
McConkey v. AON Corp., 1063
McCray v. DPC Industries Inc., 107
McCue v. Klein, 159
McCulloh v. Drake, 106
McCullough v. McAnelly, 174
McDonald v. City of Red Wing, 191
McDonald v. Ford, 81
McDonald v. Highline School Dist.
#401, 614
McDougald v. Garber, 210
McDougall v. Lamm, 666
McElrath v. Electric Inv. Co., 1062
McGee v. A C And S Inc., 209
McGee v. Alexander, 689
McGee v. Chalfant, 707
McGrath v. Zenith Radio Corp., 1052
McGuiggan v. New England Tel. & Tel.
Co., 697
McGuire v. Almy, 54, 58, 517
McIntosh v. Omaha Public Schools, 616
McIntyre v. Smoke Tree Ranch Stables,
97
McKee v. Cosby, 1122
McKenna v. Straughan, 578, 707
McKernan v. Aasheim, 711
McKinney v. Hartz & Restle Realtors
Inc., 608
McKinney v. State, 734
McLennan v. American Eurocopter
Corp. Inc., 825
McMillen v. Klingensmith, 925
McNair v. Lend Lease Trucks Inc., 747
McNamara v. Freedom Newspapers Inc.,
1159
McNeil v. Nabors Drilling USA Inc.,
567
McNeil v. Wagner College, 575
McQueen v. Burkhart, 1021
M’Culloch v. Maryland, 846
Meat Producers Inc. v. McFarland, 999,
1011
Medlar v. Mohan, 286, 363
Medlen v. Strickland, 146
Medlin v. Bass, 33, 752, 760
Medtronic Inc. v. Lohr, 847
Meeropol v. Nizer, 1186
Meighan v. Shore, 313
Melendres v. Soales, 239
Mellon Mortgage Co. v. Holder, 271
Melvin v. Reid, 1158
Memorial Med. Ctr. of E. Tex. v.
Keszler, 925
Memphis Publishing Co. v. Nichols,
1181
Meny v. Carlson, 400
Mercado v. Mount Sinai Hosp. Med.
Ctr., 169
Merchants Fast Motor Lines v. State,
381
Merhi v. Becker, 477, 483, 502
Merkel v. Safeway Stores Inc., 637
Merrick v. Thomas, 569
Merrill v. Trump Ind. Inc., 692
MetLife Auto & Home v. Joe Basil
Chevrolet Inc., 407
Meyer ex rel. Coplin v. Fluor Corpora-
tion, 214
Meyers v. Medford Lakes Bd. of Educ.,
321
Micari v. Mann, 33, 170, 209
Miceli v. Ansell Inc., 716
Michie v. Great Lakes Steel Division
National Steel Corp., 905
Michigan Coalition for Responsible
Gun Owners v. City of Ferndale,
946
Mieske v. Bartell Drug Co., 146
Miglino v. Bally Total Fitness of Greater
New York, 351, 355
Mikolajczyk v. Ford Motor Co., 812
Milkovich v. Lorain Journal Co., 1091,
1134
Miller v. Brooks, 1169
Miller v. Grand Union Co., 926
Miller v. HCA Inc, 162
Miller v. Jeffrey, 900
Miller v. NBC, 1176

- Miller v. Redwood Toxicology Laboratory Inc., 569
- Miller v. Stouffer, 910
- Minn. Fire & Cas. Ins. Co. v. Paper Recycling of La Crosse, 626
- Minnich v. Med-Waste Inc.*, 884
- Minyard Food Stores Inc. v. Goodman, 746
- Mirand v. City of N.Y., 542
- Mission Petroleum Carriers Inc. v. Solomon, 569
- Mitchell v. Davis, 934
- Mitchell v. Gonzales, 423
- Mitchell v. Ridgewood E. Apts. LLC, 631
- Mobil Chemical Co. v. Bell*, 383
- Mobley Law Firm PA v. Lisle Law Firm PA, 98
- Moffat v. Cauldwell, 1088
- Mohr v. Commonwealth, 734
- Moll v. United States, 126
- Monell v. Department of Soc. Servs., 952
- Money v. Manville Corp. Asbestos Disease Comp. Trust Fund, 413
- Montgomery Elevator Co. v. Gordon, 392, 892
- Montgomery v. Devoid, 458
- Montgomery v. Royal Motel*, 362
- Montgomery Ward v. Andrews, 993
- Monzon v. U.S., 948
- Moody v. Delta Western Inc., 885
- Moore v. Big Picture Co., 1189
- Moore v. El Paso Chamber of Commerce*, 73
- Moore v. Francis, 1088
- Moore v. Lillebo, 233
- Moore v. Regents of the Univ. of Cal., 155, 332
- Morales v. Lee*, 120
- Moranko v. Downs Racing LP, 706
- Moreno v. Sanchez, 981
- Morgan v. Greenwaldt, 120
- Morgan v. Horton, 1037
- Morgan v. Scott, 223
- Morganroth & Morganroth v. Norris McLaughlin & Marcus, 461
- Morrison v. MacNamara, 310
- Morrison v. National Broadcasting Co., 1091
- Morrissey v. Yale University, 94
- Morrow Shoe Mfg. Co. v. New England Shoe Co., 142
- Moser v. Ratinoff, 880
- Moses v. Episcopal Diocese of Colorado, 677
- Moss v. Rishworth, 164
- Mostert v. CBL & Assoc., 637
- Mower v. Leicester, 951
- Muela v. Gomez, 533
- Mueller v. McMillan Warner Ins. Co., 514
- Muhammad v. Strassburger et al., 315
- Mulcahy v. Lilly & Co., 442
- Mullin v. Municipal City of South Bend, 594
- Mullins v. Parkview Hosp. Inc., 70
- Mulraney v. Auletto's Catering, 637
- Munger v. Seehafer, 994
- Munn v. The Hotchkiss School*, 538
- Murillo v. Seymour Ambulance Assn., 533
- Murphy v. E. R. Squibb & Sons Inc., 441, 798
- Murphy v. I.R.S., 241
- Murphy v. Implicito, 71, 909
- Murphy v. Neely, 295
- Murphy v. Smith, 981
- Murphy v. Steeplechase Amusement Co., 864, 865
- Murray v. Farmers Ins. Co., 408
- Murray v. Ford Motor Co., 831
- Murray v. Great Gorge Resort Inc., 881
- Muzikowski v. Paramount Pictures Corp., 1095
- Myers v. Lee, 93
- Myers v. Robertson, 944
- Myrick v. Barron, 1168

- NAACP v. Acusport Inc.*, 1017
Nabors Well Services Ltd. v. Romero, 900
Nabozny v. Barnhill, 877
Nader v. General Motors Corp., 1175
Namath v. Sports Illus., 1187
Napieralski v. Unity Church, 544
Nasser v. Parker, 558
National Cas. Co. v. Northern Trust Bank of Fla., 730
National Conversion Corp. v. Cedar Building Corp., 1063
National Sav. Bank v. Ward, 310
Nearhood v. Anytime Fitness-Kingsville, 872
Neff v. Time Inc., 1160
Neiman v. Upper Queens Med. Group City Ct., 657
Neiman-Marcus v. Lait, 1094
Nelson v. Burnham & Morrill Co., 602
Nelson v. Salt Lake City, 590
Neubauer v. Disneyland Inc., 97
Neufeldt v. L.R. Foy Constr. Co., 93
New Prime Inc. v. Brandon Balchune Constr. Inc., 914
New York Times Co. v. Connor, 1113
New York Times Co. v. Sullivan, 1107, 1137, 1178, 1180
New York Chicago & St. Louis R.R. v. Mushrush, 616
Newbury v. Vogel, 908
Newell v. Montana W. Inc., 637
Newsom v. B.B., 546
Ney v. Yellow Cab Co., 347
Nichols v. Dobler, 698
Nicholson v. St. Anne Lanes Inc., 377
Nielsen v. Dickerson, 110
NKC Hosps. Inc. v. Anthony, 522
Noble v. Louisville Transfer Co., 68
Nobrega v. Edison Glen Assoc., 1050
Noguchi v. Nakamura, 120
Noll v. Marian, 632
Noone v. Chalet of Wichita, 688
Normand v. City of New Orleans, 746
North Carolina ex rel. Cooper v. Tennessee Valley Auth., 1016
Norton v. Wilbur Waggoner Equip. Rental, 342
Nova Univ. v. Wagner, 546
Nunez v. Carrabba's Italian Grill Inc., 692
Nussbaum v. Lacopo, 274
O.L. v. R.L., 611
O'Banner v. McDonald's Corp., 768
Obde v. Schlemeyer, 1049
O'Brien v. Cunard S.S. Co., 67, 160
O'Brien v. Muskin Corp., 853
O'Connell v. State, 964
Oddo v. Queens Village Comm. for Mental Health, 543
Ogden v. Claycomb, 173
Ohler v. Tacoma Gen. Hosp., 971
O'Keefe v. Snyder, 149
Okoli v. Paul Hastings LLC., 81, 1092
Old Island Fumigation Inc. v. Barbee, 778
Oliver v. Village Voice Inc., 1114
Ollman v. Evans, 1136
Oltmer v. Zamora, 1055
Opperman v. Path Inc., 1171
Orozco v. Dallas Morning News Inc., 465
Ortega v. City of New York, 407
Ortega v. K-Mart Corp., 377
Orthmann v. Apple River Campground Inc., 634
Ortiz v. John D. Pittenger Builder Inc., 665
Osborn v. Irwin Mem. Blood Bank, 326, 327
Osborne v. U.S., 522
O'Shea v. Riverway Towing Co., 237, 240
Osland v. Osland, 977
Otis Engineering Corp. v. Clark, 707
O'Toole v. Carr, 747
O'Toole v. U.S., 948
Ouellette v. Carde, 515
Overbaugh v. McKutcheon, 697

- Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co.*, 474, 487
Oviatt v. Pearce, 118
Owens Corning v. R.J. Reynolds Tobacco Co., 473
Owens-Corning Fiberglas Corp. v. Malone, 255
Owings v. Jones, 642
P.C. v. Bank of America N.A., 154
Pachowitz v. Le Doux, 1165
Pachunka v. Rogers Construction Inc., 887
Padula v. New York, 307
Pagelsdorf v. Safeco Ins. Co. of Am., 645
Pakos v. Clark, 88
Palm Springs-La Quinta Development Co. v. Kieberk Corp., 151
Palmer v. Warren St. Ry. Co., 510
Palsgraf v. Long Island R.R. Co., 62, 266, 450
Pannu v. Land Rover North America Inc., 806
Papieves v. Lawrence, 113
Paris v. Division of State Compensation Ins. Funds, 88
Parker & Wobber v. Miles & Stockbridge P.C., 314
Parker v. Arthur Murray Inc., 1055
Parker v. St. Lawrence County Public Health Department, 953
Parvi v. City of Kingston, 125, 577
Patrick v. McGowan, 1145
Patten v. Raddatz, 171
Pattershall v. Jenness, 174
Paul v. Watchtower Bible and Tract Society, 115
Pavlik v. Kornhaber, 103
Payne v. Jones, 259
Payne v. Jones, 259
Paz v. Brush Engineered Materials Inc., 216
PCA v. Livestock Producers Inc., 105
Pearson v. BP Products N.A. Inc., 389
Pearson v. Canada Contracting Co., 885
Pearson v. Dodd, 135
Peck v. Counseling Service of Addison County Inc., 554
Peck v. Tribune Co., 1088
Pedroza v. Lomas Auto Mall Inc., 458
Peek v. Gurney, 1049
Peeler v. Hughes & Luce, 318
Pegasus v. Reno Newspapers, 1122
Pelkey v. Brennan, 346
Pellegrini v. Cliffwood-Blue Moon Joint Venture Inc., 1052
Pelletier v. Fed. Home Loan Bk. Bd., 956
Pelman v. McDonald's Corp., 845
Penn v. Henderson, 174
People ex rel Spitzer v. Sturm Ruger & Co. Inc., 1021
People for the Ethical Treatment of Animals v. Bobby Berosini Ltd., 1167
People v. Conagra Grocery Products Co., 1030
Perez v. Lopez, 518
Perez v. Wyeth Labs. Inc., 823, 828
Pero's Steak and Spaghetti House v. Lee, 979
Perry v. Whitley County 4-H Clubs Inc., 966
Perry-Rogers v. Obasaju, 668
Pesaturo v. Kinne, 997
Peter Scalamandre & Sons Inc. v. Kaufman, 1114, 1115
Peterson v. Haffner, 59
Peterson v. Sorlien, 128
Peterson v. Superior Court of Ventura Co., 257
Petrillo v. Bachenberg, 314
Pfenning v. Lineman, 884
Phelps v. Hamlett, 181
Philadelphia Newspapers Inc. v. Hepps, 1092, 1137
Philip Morris USA v. Williams, 252
Philippides v. Bernard, 213
Picard v. Barry Pontiac-Buick Inc., 72

- Pickering v. Pickering, 100
Pierce v. Cook, 105
Pippin v. Potomac Electric Power Co., 862
Pittman v. Frazer, 461
Pleasant Glade Assembly of God v. Schubert, 115
Ploof v. Putnam, 195
Plotkin v. Club Valencia Condo. Ass'n, 994
Plotnik v. Meihaus, 146
Plumley v. Birge, 303
Podias v. Mairs, 453
Poe v. San Antonio Express-News Corp., 1094
Pokora v. Wabash Ry. Co., 287, 339
Pontbriand v. Sundlun, 1159
Ponticas v. K.M.S. Invs., 760
Pope v. City of Houston, 999
Potocnik v. Carlson, 1176
Potter v. Firestone Tire & Rubber Co., 651
Poyser v. Peerless, 1122
Prah v. Maretti, 1000, 1001, 1015
Prescott v. Leaf River Forest Products Inc., 1021
President & Directors of Georgetown College v. Hughes, 960
Pressey by and through Pressey v. Children's Hosp. Colorado, 730
Pressil v. Gibson, 715, 717
Preston v. State, 201
Price v. Halstead, 458
Price v. Hartford Accident and Indemnity Co., 256
Price v. Purdue Pharma Co., 200
Priebe v. Nelson, 29, 887
Prince v. Out Publ'g Inc., 1094, 1159
Pring v. Penthouse Int'l Ltd., 1095
Pringle v. Valdez, 900
Pritchard v. Stanley Access Technologies LLC, 383
Progressive Ins. Co v. General Motors Corp., 831
Provence v. Doolin, 864
Provenzano v. Integrated Genetics, 725
Provenzo v. Sam, 513, 515
Providence Health Center v. Dowell, 519
Pruitt v. Savage, 645
Prukala v. Elle, 1175
Public Health Trust v. Brown, 712
Pucalik v. Holiday Inns Inc., 576
Pucci v. Algieri, 1025
Pulka v. Edelman, 534
Pulliam v. Gentry, 1059
Purtle v. Shelton, 303
Pyeritz v. Com., 406
Quackenbush v. Superior Ct., 264
Quackenbush v. Lackey, 957
Quinn v. Limited Express Inc., 170
R.D.J. v. Vaughan Clinic P.C., 133
Rabideau v. City of Racine, 666
Rabinowitz v. Wahrenberger, 98
Railroad v. Cathey, 415
Ramcharan v. Pariser, 525
Ramos v. Tex. Dept. of Pub. Safety, 957
Ranard v. O'Neil, 358
Randall's Food Markets Inc. v. Johnson, 94, 118, 1145
Ranson v. Kitner, 52, 53
Rasky v. Columbia Broadcasting System Inc., 1090
Ray v. American Natl. Red Cross, 373
Ray v. Cutter Labs., 442
Reardon v. Windswept Farm LLC, 871
Reddell v. Johnson, 880
Reeves v. Melton, 89
Reilly v. Anderson, 911
Rein v. Benchmark Const. Co., 275
Rein v. Fog, 932
Rekab Inc. v. Frank Hrubetz & Company, 529
Remsburg v. Docusearch Inc., 546, 550, 1167, 1188
Remsburg v. Montgomery, 346, 533
Remy v. MacDonald, 730
Reno v. D'Javid, 198

- Renslow v. Mennonite Hosp., 729
Renwick v. News and Observer Publishing Co., 1178
Renzi v. Paredes, 430
Reynolds v. Pierson, 54
Reynolds v. Texas and Pacific Railway Co., 412
Rhodes v. E.I. du Pont de Nemours & Co., 69, 992, 1023
Rhodes v. Illinois Cent. Gulf R.R., 604
Rhudy v. Bottlecaps Inc., 637
Rice v. Press, 1059
Richard v. A. Waldman and Sons Inc., 1075
Richards v. Richards, 1169
Richetta v. Stanley Fastening Systems L.P., 813
Richter v. Wagner Oil Co., 1052, 1066
Riddle v. Perry, 1144
Ridley v. Safety Kleen Corp., 900
Rieck v. Medical Protective Co., 713
Rios v. Sifuentes, 778
Rios v. Smith, 580
Riss v. City of New York, 584
Rivas v. Overlake Hosp. Med. Ctr., 980
Riverbend Country Club v. Patterson, 745
Rizzuto v. Davidson Ladders Inc., 406
Roa v. Lodi Medical Group Inc., 264
Roach v. Dental Arts Lab. Inc., 508
Roberts v. Speck, 184
Roberts v. Waldbaum's, 736
Roberts v. Williamson, 213
Robins v. Conseco Fin. Loan Co., 1165
Robinson Property Group Ltd. Partnership v. McCalman, 689
Robinson v. Lindsay, 303
Robinson v. Omer, 1073
Robinson v. Paramount Pictures Corp., 94
Robinson v. Reed-Prentice Division of Package Machinery Co., 845
Rocha v. Faltys, 561
Rochford v. G.K. Dev. Inc., 620
Rochford v. Woodloch Pines Inc., 879
Rodebush v. Oklahoma Nursing Homes Ltd., 742
Rodrigues v. Hawaii, 654
Rodriguez v. Suzuki Motor Corp., 244
Roe v. Wade, 718, 720
Rogers v. Board of Road Comm'rs for Kent County, 993
Rogers v. Peeler, 173
Roman Catholic Archbishop of Boston v. Rogers, 993
Romero v. Byers, 672
Rose v. Daily Mirror Inc., 1096
Rose v. National Tractor Pullers Ass'n Inc., 872
Rosemont Ent. Inc. v. Choppy Productions Inc., 1187
Rosen v. Capital City Press, 1093
Rosenberg v. Helinski, 1148
Rosenblatt v. Baer, 1116
Rosenbloom v. Metromedia Inc., 1113, 1117, 1126, 1137
Ross v. Columbia Newspapers Inc., 1089
Ross v. Glaser, 580
Ross v. Souter, 63
Rossi v. Del Duca, 196
Rouch v. Enquirer & News of Battle Creek, 1093
Rousey v. Rousey, 935
Rowe v. Bennett, 659
Rowland v. Christian, 621
Rucker v. Fed. Natl. Mortg. Assn., 619
Rudeck v. Wright, 325, 421
Ruple v. Brooks, 51
Rush v. Commercial Realty Co., 890
Russell v. American Real Estate Corp., 142, 993
Russell v. The Men of Devon, 950
Russell-Vaughn Ford Inc. v. Rouse, 144
Russo v. Griffin, 318
Russo v. White, 90
Ruth v. Dight, 970, 971
Ruth v. Fletcher, 92
Ryan v. New York Cent. R.R. Co., 470

- Rylands v. Fletcher, 777
S & F Corporation v. Daley, 79
S & W Seafoods v. Jacor Broadcasting,
465
S. Shore Baseball LLC v. DeJesus, 878
S.H. Kress & Co. v. Brashier, 73
S.V. v. R.V., 241, 546, 611, 977
Saba v. Darling, 38, 58, 72, 709
Sabrah v. Lucent Tech. Inc., 1167
Sabrina W. v. Willman, 1175
Saelzler v. Advanced Group, 416
Sage Title Group LLC v. Roman, 154,
326
Sahlie v. Johns-Manville Sales Corp.,
971
Saiz v. Belen Sch. Dist., 754
Sakon v. PepsiCo Inc., 465
Saks v. Sawtelle Goode Davidson &
Troilo, 200
Salevan v. Wilmington Park Inc., 638
Sall v. T's Inc., 570
Saller v. Crown Cork & Seal Co. Inc., 809
Sampson v. U. of Texas at Austin, 616
San Benito Bank & Trust Co. v. Landair
Travels, 533
Sanchez v. Schindler, 233
Sanders v. Acclaim Entertainment Inc.,
464
Sands ex rel. Sands v. Green, 980
Santiago v. Sherwin Williams Co., 441
Santillo v. Reedel, 1179
Sarwer v. Conde Nast Publications Inc.,
1097
Sawyer v. Midelfort, 977
Scheckel v. NLI Inc., 639
Schivarelli v. CBS Inc., 1142
Schmidt v. Bishop, 977
Schmidt v. Mahoney, 325
Schneider Nat. Carriers Inc. v. Bates,
1031
Schneider v. Amazon.com, 1100
Schneider v. Haws, 325
Schoeps v. Whitewater Adventures LLC,
872
Schramm v. Lyon, 984
Schultz v. Foster-Glocester Reg. Sch.
Dist., 589
Schurk v. Christensen, 665
Schuster v. City of New York, 592
Scott v. Bradford, 328, 334
Scott v. Minneapolis Pub. Sch. Spec.
Dist. No. 1, 343
Scurlock Oil Co. v. Smithwick, 930
Seals v. Snow, 56
Searcy v. Auerbach, 1148
Seim v. Garavalia, 30, 366, 735
Sepaugh v. LaGrone, 938
Shafer v. Berger, 1065
Shain v. Racine Raiders Football Club
Inc., 865
Sharpe v. St. Luke's Hosp., 569
Sharpe v. Turley, 200
*Sharyland Water Supply Corp. v. City of
Alton*, 837
Sheahan v. Northeast Illinois Reg'l
Commuter R.R. Corp., 213
Sheehan v. Anderson, 1145
*Sheehan v. Roche Brothers Supermarkets
Inc.*, 377
Sheehan v. St. Paul & Duluth Ry. Co.,
604
Shelby v. Sun Printing & Pub. Ass'n,
1097
Sheltra v. Smith, 83
Sherbert v. Alcan Alum. Corp., 325
Shideler v. Habiger, 477
Shiple v. City of New York, 659
Shockley v. Hoechst Celanese Corp.,
777
Shoemake v. Fogel Ltd., 927
Shor Int'l. Corp. v. Eisinger Enterprises
Inc., 1092
Shulman v. Group W Productions Co.,
1177
Shypulski v. Waldorf Paper Products
Co., 887
Sidis v. F-R Publishing Corp., 1155
Sierocki v. Hieber, 546

- Sierra Fria Corp. v. Donald J. Evans
P.C., 333
- Silas v. Bowen*, 171
- Silberstein v. Cordie, 546
- Simeonidis v. Mashantucket Pequot
Gaming Enterprise*, 480
- Simmons v. Loose, 192
- Simonson v. White, 293
- Simpson v. Mars Inc., 1101
- Sims v. Giles, 616
- Sinclair v. Brill, 977
- Sindell v. Abbott Laboratories*, 434
- Sindle v. N.Y.C. Transit Auth., 204
- Singer v. Marx, 59
- Sippy v. Cristich, 1067
- Sitzman v. Schumaker, 36
- Skipworth v. Lead Indus. Ass'n Inc., 441
- Slater v. Skyhawk Transp. Inc., 927
- Sloan v. South Carolina Dep't of Pub.
Safety, 1189
- Slocum v. Food Fair Stores of Florida
Inc.*, 96, 650
- Smiley v. Corrigan, 913
- Smith & Gaston Funeral Directors v.
Wilson, 654
- Smith v. Atkinson, 407
- Smith v. Baptiste, 26
- Smith v. Borello, 730
- Smith v. Calvary Christian Church, 162
- Smith v. Cote, 717
- Smith v. Cutter Biological Inc., 442
- Smith v. Durden*, 1131
- Smith v. Howard Johnson Co., 402
- Smith v. Jersey Central Power & Light
Co.*, 1007
- Smith v. Lannert*, 740, 746, 904
- Smith v. Lewis, 314
- Smith v. Lockheed Propulsion Co., 777
- Smith v. Moody Gardens Inc., 416, 966
- Smith v. Moran, 66
- Smith v. Murray, 311
- Smith v. State Dept. of Health & Hosp.,
430
- Smith v. Toney, 665
- Smith v. Wal-Mart Stores Inc., 620
- Smitherman v. McCafferty, 187
- Smrtka v. Boote, 346, 619
- Snodgras v. Martin & Bayley Inc., 690
- Snow v. City of Columbia, 989
- Softcheck v. Imesch, 977
- Soldano v. O'Daniels, 583
- Solomon R. Guggenheim Foundation v.
Lubell, 149
- Solomon v. City of New York, 594
- Sonoran Desert Investig. Inc. v. Miller,
203
- Sorenson v. Gardner, 1065
- Sorichetti v. City of New York*, 590
- Sorkin v. Lee, 713
- Soto v. New York City Transit Auth.,
470
- Soule v. General Motors Corp., 808
- South v. McCarter, 572
- Southwest Key Program Inc. v. Gil-
Perez, 420
- Souza v. City of Antioch, 595
- Sovereign Pocohontas v. Bond*, 1045
- Sparks v. Peaster, 1115, 1122
- Spears v. Coffee, 509
- Spence v. Three Rivers Bldrs. &
Masonry Supply, 367
- Spiess v. Brandt, 1059
- Spokane Truck & Dray Co. v. Hoefler,
245
- Sprecher v. Adamson Co., 638
- Springmeyer v. Ford Motor Co., 529
- Spur Industries Inc. v. Del E. Webb
Development Co.*, 1033
- Squaw Valley Ski Corp. v. Superior Ct.,
97
- Squeglia v. Squeglia, 934
- St. Amant v. Thompson, 1113
- St. Elizabeth Hospital v. Garrard, 682
- St. Joseph Hosp. v. Wolff, 461
- Staab v. Diocese of St. Cloud, 913
- Stachniewicz v. Mar-Cam Corp.*, 347
- Stacy v. Jedco Constr. Inc., 307
- Standing Comm. v. Yagman, 1141

- Stanton v. Univ. of Maine, 542
Staples v. Bangor Hydro-Elec. Co., 1141
Starr v. Hill, 784
Starr v. Pearle Vision Inc., 1101
State Ex Rel. Elvis Presley Int'l Mem. Foundation v. Crowell, 1189
State Ex Rel. Johnson & Johnson Corp. v. Karl, 828
State Farm Fire & Cas. Co. v. White-Rodgers Corp., 989
State Farm Mut. Auto. Ins. Co. v. Traver, 745
State Farm Mutual Automobile Insurance Co. v. Campbell, 246
State v. Crow, 80
State v. Floyd, 173
State v. Furr, 126
State v. Lead Industries Association Inc., 1024
State v. McGraw, 137
State v. Second Jud. Dist. Ct., 957
State v. Seventh Regiment Fund Inc., 142
State v. Tidwell, 21, 543
States v. Lourdes Hosp., 383
Statler v. George A. Ray Mfg. Co., 790
Stender v. Blessum, 680
Sterling v. Rust Communications, 1090
Stevenson v. Delahaye, 516
Stevenson v. E.I. DuPont de Nemours and Co., 996
Stien v. Marriott Ownership Resorts Inc., 1182
Stimson v. Carlson, 880
Stokes v. Lyddy, 644
Stone v. N.C. Dept. of Labor, 589
Stout v. Warren, 773
Stratmeyer v. U.S., 589
Strauss v. Belle Realty Co., 595
Strickland v. Medlen, 146
Stringer v. Minnesota Vikings Football Club, 36
Struempler v. Estate of Kloeping, 513
Strunk v. Zoltanski, 643
Sullivan v. Conway, 1141
Sullivant v. City of Okla. City, 192
Summers v. Bailey, 1175
Summers v. Tice, 392, 432, 435, 436, 443
Surocco v. Geary, 188
Svendsen v. State Bank of Duluth, 1091
Swanson v. Swanson, 89, 1069
Sweeney v. Erving, 385
Swenson v. Bender, 1051
Swenson v. Waseca Mut. Ins. Co., 581
Swerdlick v. Koch, 1167
Swierczek v. Lynch, 745
Swinton v. Whitinsville Sav. Bank, 1048
Taber v. Maine, 949
Taboada v. Daly Seven Inc., 97
Taco Bell Corp. v. Cracken, 314
Taco Bell Inc. v. Saleme, 125
Tanberg v. Ackerman Inv. Co., 223
Tanner v. Ebbale, 1184
Tarasoff v. Regents of the University of California, 555
Tarlton v. Kaufman, 1000
Taylor v. John Crane Inc., 912
Taylor v. KTVB Inc., 1160
Taylor v. Muncie Med. Investors, 734
Taylor v. Vallelunga, 112
Teachout v. Van Hoesen, 1059
Temple-Inland Forest Products Corp. v. Carter, 651
Tenuto v. Lederle Labs., 325
Terhell v. American Commonwealth Assoc., 886
Terwilliger v. Wands, 1124
Tesar v. Anderson, 232, 273, 730
Tessier v. Rockefeller, 1060
Texas Dept. of Transp. v. Garrison, 949
Texas Dept. of Transp. v. Ramirez, 949
Texas Diamond Int'l v. Tiffany & Co., 144
Texas Drydock Inc. v. Davis, 576
Texas Home Mgt. Inc. v. Peavy, 545
Texas v. United States, 312
Thabault v. Chait, 316
Thapar v. Zezulka, 558

- The T.J. Hooper*, 369, 371
Theroux v. Kedenburg Racing Assn., 868
Thing v. La Chusa, 661, 683
Thomas v. Clayton Williams Energy Inc., 107
Thomas v. L.A. Times Communications, 1142
Thomas v. Winchester, 790
Thompson v. Best, 1051
Thompson v. Kaczinski, 491
Thompson v. Nason Hosp., 327
Thompson v. UBS Fin. Services Inc., 153
Thornhill v. Wilson, 188
Three Amigos SJL Rest. Inc. v. CBS News Inc., 1095
Threlkeld v. Total Petroleum Inc., 375
Thrifty-Tel Inc. v. Bezenek, 137
Thyroff v. Nationwide Mut. Ins. Co., 154
Tidelands Automobile Club v. Walters, 93
Tiller v. McLure, 94
Time Inc. v. Firestone, 1125
Time Inc. v. Hill, 1178, 1180, 1182
Time Inc. v. Pape, 1114
Times Mirror Co. v. Superior Court (Doe), 465
Tobin v. AMR Corp., 582
Tomkiewicz v. Detroit News Inc., 1116
Tompkins v. Cyr, 1166
Toombs v. Alamo Rent-A-Car Inc., 783
Tousley v. Board of Education, 53
Townsend v. Townsend, 253, 619, 690
Tracey v. Solesky, 770
Trammell Crow Central Texas Ltd. v. Gutierrez, 628
Tran v. Fiorenza, 115
Trapp v. Vess, 516
Tretler v. Meredith Corp., 1089
Trevino v. Ortega, 4, 401
Triangle Sheet Metal Works Inc. v. Silver, 245
Tripoli v. Gurry, 173
Trotter v. Okawa, 170
Trupia v. Lake George Central School District, 881
Turcotte v. Fell, 874, 882
Turman v. Central Billing Bureau, 109
Turnbough v. Ladner, 870
Turner v. Anderson, 201
Turner v. Jordan, 895
Turner v. Mandalay Sports Entertainment LLC, 878
Turner v. PCR Inc., 737
Turner v. Shop Rite Inc., 896
Turpin v. Merrell Dow Pharmaceuticals Inc., 416, 826
Twardy v. Northwest Airlines Inc., 746
Twohig v. Briner, 900
Twyman v. Twyman, 106, 684
Tyson v. Tyson, 970
U.S. Fid. & Guar. Co. v. Jadranska Slobodna Plovidba, 281
U.S. v. Gilman, 947
U.S. v. Stevens, 534
Uccello v. Laudenslayer, 643
Union Pac. Res. Group Inc. v. Rhone-Poulenc Inc., 1051
Union Pac. Resources Co. v. Cooper, 998
Union Park Mem. Chapel v. Hutt, 566
Union Pump Co. v. Allbritton, 496
Uniroyal Goodrich Tire Co. v. Martinez, 826
United Blood Servs. v. Quintana, 366
United States v. Carroll Towing Co., 278
United States v. Causby, 993
United Zinc & Chemical Co. v. Britt, 182
University of Notre Dame du Lac v. Twentieth Century-Fox Film Corp., 1186
Urie v. Thompson, 980
Uriell v. Regents of University of California, 288

- UTV of San Antonio Inc. v. Ardmore Inc., 1092
- Vahila v. Hall, 316, 431
- Valentino v. Philadelphia Triathlon LLC, 872
- Van Horn v. Watson, 514
- Van v. Pena, 692
- Varenti v. Gannett Co. Inc., 1141
- Varwig v. Anderson-Behel Porsche/Audi Inc., 1078
- Vasquez v. Macri, 326
- Vassallo v. Baxter Healthcare Corp., 842
- Vassiliades v. Garfinckel's, Brooks Brothers*, 1160
- Vaughan v. Menlove, 290
- Vaughn v. Fedders Corp., 983
- Veazey v. Elwood Plantation Associates Ltd., 896
- Veile v. Martinson, 109
- Venetoulis v. O'Brien, 707
- Verdugo v. Target Corp., 514
- Vergara by Vergara v. Doan, 321
- Verrett v. Houma Newspapers Inc., 743
- Villarreal v. Grant Geophysical Inc., 997
- Villasenor v. Martinez, 239
- Villasenor v. Villasenor, 100, 239
- Villers v. County of San Diego, 346
- Vince v. Wilson, 579
- Vincent v. Lake Erie Transp. Co.*, 193
- Viner v. Sweet, 316, 423
- Vitale v. Henchey, 160
- Vitale v. National Lampoon Inc., 1123
- Vmark Software Inc. v. EMC Corp., 1067
- Vosburg v. Putney, 15
- Voss v. Tranquilino, 691
- Vulcan Metals Co. v. Simmons Mfg. Co., 1057
- W.J.A. v. D.A.*, 37, 1127
- Wagner v. International Railway Co., 511
- Wagner v. State, 56
- Wagon Mound No. 1 (Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., Ltd.)*, 474, 487
- Wagon Mound No. 2 (Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co.)*, 478
- Wakulich v. Mraz, 709
- Walker v. Bignell, 344
- Wallace v. Ohio Dept. of Commerce, 596
- Wallace v. Smyth, 934
- Wallace v. Wilson, 703
- Wal-Mart Stores Inc. v. Diaz, 380
- Wal-Mart Stores Inc. v. Reece, 377
- Walsh v. Constantinopoulos, 209
- Walt Disney Prods. Inc. v. Shannon, 464
- Ward v. K Mart, 620
- Warr v. JMGM Group LLC, 688
- Warren v. Davis, 778
- Washington v. John T. Rhines Co., 666
- Waters v. New York City Hous. Auth., 273
- Weathers v. Marshalls of MA Inc., 107
- Webb v. Rome W. & O. R. Co., 470
- Webb v. Snow, 179, 617
- Wegner v. Milwaukee Mutual Insurance Co.*, 190
- Weinberg v. Dinger, 595
- Weintraub v. Krobatsch*, 1047
- Weirum v. RKO General Inc., 462
- Welling v. Weinfeld, 1184
- Welty v. Heggy, 93
- Wendt v. Host Int'l Inc., 1190
- Wertheim v. U.S. Tennis Ass'n Inc., 879
- West v. East Tennessee Pioneer Oil Co.*, 703
- West v. Media General Convergence Inc., 1177
- Westby v. Gorsuch, 1058
- Westchester Fire Ins. Co. v. Admiral Ins. Co., 257
- Western Union Telegraph Co. v. Hill*, 76

- Western Union Telegraph Co. v. Hoffman*, 856
- Westfall v. Erwin, 955
- Wheeler v. New Times Inc., 1097
- Whelan v. Van Atta, 617
- Whetham v. Bismarck Hosp., 666
- Whitaker v. Kruse, 495
- White v. County of Orange, 751
- White v. University of Idaho, 71
- Whitehead v. Food Max of Miss. Inc., 895
- Whitney v. California, 1109
- Whittaker v. Sanford, 120
- Whitworth v. Bynum, 367, 368
- Widera v. Ettco Wire and Cable Corp., 545
- Wieder v. Chemical Bank, 154
- Wietecha v. Peoronard, 886
- Wilbur v. Kerr, 715
- Wiles v. Webb, 292
- Wilk v. Georges, 620
- Will v. Michigan Dept. of State Police, 952
- Williams v. Pentecostal Church Int'l, 544
- Williams Ford Inc. v. Hartford Courant Co., 1074
- Williams v. Bright*, 223, 298
- Williams v. Crist, 297
- Williams v. Garraghty, 1142
- Williams v. Kearbey, 56
- Williams v. Manchester, 520, 729
- Williams v. Pasma, 1123
- Williams v. Rank & Son Buick Inc., 1066
- Williams v. Roberts, 143
- Williams v. State, 474
- Williams v. Steves Industries Inc.*, 409
- Wilson v. Dimitri, 179
- Wilson v. Ferguson, 658
- Winfrey v. GGP Ala Moana LLC, 627
- Winget v. Winn-Dixie Stores Inc.*, 1005
- Winter v. G.P. Putnam's Sons, 465, 1085
- Winterbottom v. Wright, 789, 790
- Winterstein v. Wilcom, 872
- WJLA-TV v. Levin, 1114
- Wolf v. Brungardt, 1053
- Wolfe v. MBNA America Bank*, 551
- Wolfson v. Lewis, 1175
- Womack v. Eldridge, 87
- Womack v. Von Rardon, 146
- Wood v. Picillo, 1026
- Wooten v. Caesars Riverboat Casino LLC, 879
- Wright v. Brooke Group Ltd., 823
- Wright v. Carter, 388
- Wrights v. Red River Fed. Cr. U., 1072
- Wyckoff v. George C. Fuller Contracting Co., 609
- Wyckoff v. Mogollon Health All., 978
- Wyeth v. Levine*, 846
- Wyke v. Polk County Sch. Bd., 558
- Wyman v. Wallace, 975
- Wynberg v. National Enquirer Inc., 1125
- Xiaokang Xu v. Xiaoling Shirley He, 1106
- Yancey v. Lea, 862
- Yath v. Fairview Clinics N.P., 1164
- Ybarra v. Spangard*, 397, 433, 436
- Yommer v. McKenzie, 773
- Yonaty v. Mincolla, 1106
- Young v. Allstate Ins. Co., 93
- Young v. Clark*, 291
- Young v. Salt Lake City Sch. Dist., 542
- Young v. Warren, 178
- Young v. Williams, 978, 985
- Yowell v. Piper Aircraft Corp., 232
- Zafft v. Lilly & Co., 442
- Zedella v. Gibson, 580
- Zeni v. Anderson*, 357, 359
- Zeran v. America Online Inc., 1100
- Zerby v. Warren, 366
- Ziegelheim v. Apollo, 315
- Zimmerman v. Ausland*, 221
- Zimny v. Cooper-Jarrett Inc., 517

Table of Books and Articles

- Abraham, Kenneth S., *The Liability Century: Insurance and Tort Law from the Progressive Era to 9/11* (2008): 38
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First Edition Preface

Tort law is a prime battleground in the ongoing debate over social policy. This book attempts to illuminate that debate through the use of cases and materials that clearly reflect not only the current rules on injury compensation, but also the policy choices underlying those rules.

Lawyers must know what the law is now, and how to apply it to the facts of a client's case. But they must also understand public policy, if they are to effectively participate in the important (and inevitable) legal processes through which existing rules are continually challenged, reaffirmed, discarded, and replaced.

As an instructional text, *Studies in American Tort Law (SATL)* does not speak from an ideological perspective. In that sense, the book is intended to be both “balanced” and “mainstream.” Within a clear doctrinal framework (which is undoubtedly influenced by the work of the late William Prosser), a range of views is presented, reflecting dominant themes and issues in tort law, such as fault, proportionality, deterrence, internalization of costs, and distribution of losses. These views are then linked, juxtaposed, and explored with the purpose of assisting students in the task of assessing the merits and limitations of these positions. In the end, however, the evaluation of the public policies which have shaped the current tangle of rules on liability for personal injury and property damage is left to the reader. This book attempts to promote a better understanding of the values advanced and the interests sacrificed by the adoption or application of particular rules in given contexts.

In terms of organization, *SATL* moves from simple concepts and elementary rules to ones that are more complex or elusive. The book has a strong doctrinal framework and strives for clarity, to the extent that clarity is possible, on the assumption that if simple points are dealt with efficiently, time can then be profitably spent on difficult or uncertain questions.

In selecting or writing material for the book, students and professors have been foremost in mind. At each juncture, the test has been whether the selection is both readable and teachable. The goal has been to include material that is vivid, provocative, and worthy of the reader's time.

A few features of *SATL* deserve mention. First, although cases are used as the principal vehicle for teaching torts, a special effort has been made to integrate statutory law into the text. In particular, careful attention has been paid to the give-and-take process through which judge-made law and legislation influence one another. Second,

the significance of liability insurance is highlighted, for students must come to appreciate the critical role that insurance (or the lack of it) plays in the resolution of real cases. Third, “ethics notes” have been included throughout the book for the purpose of sensitizing students to the difficult ethical questions that practicing lawyers face each day. These notes demonstrate, in part, that lawyers are subject to higher standards than persons in other callings. Fourth, the materials in SATL explore a number of issues associated with the law and feminism movement. These issues raise questions of social justice that should be of concern to all lawyers.

SATL introduces students to — but is careful not to overwhelm them with — law and economics. At appropriate junctures in SATL, economic issues are explored, as in connection with the negligence balancing test and the materials discussing computation of damages, liability for nuisance, and strict liability. The goal is not to view all of tort law through an economic lens, but to employ economic analysis when it is particularly useful. This approach allows professors from the law-and-economics “school” to use the materials in the text as a starting point for classroom discussions; those faculty members who eschew economic analysis can allow the economic commentary to stand on its own, without need for in-class elaboration.

By emphasizing doctrinal clarity and the role of public policy, SATL seeks to afford professors maximum flexibility in teaching the law of torts. At the same time, it endeavors to ensure that all students develop a firm foundation in both what the law is and what it can be. We hope that SATL will prove to be a book that can be productively taught by professors and readily grasped by students.

Vincent R. Johnson
San Antonio, Texas

Alan Gunn
Notre Dame, Indiana

June 18, 1994

Sixth Edition Preface and Acknowledgements

The sixth edition of *Studies in American Tort Law* reflects the highly dynamic nature of the torts field. It includes several new principal cases, scores of citations to recent judicial opinions and statutes, and many references to the Restatement, Third, of Torts.

My PowerPoint file for *Studies in American Tort Law* is available to law professors adopting the book. Contact: vjohnson@stmarytx.edu. Students may wish to use the companion volume: Vincent R. Johnson, *Mastering Torts: A Student's Guide to the Law of Torts* (Carolina Academic Press, 6th ed. 2018).

Alan Gunn was my excellent co-author on the first three editions of *Studies in American Tort Law*. Following the completion of the third edition, he assumed emeritus status at the University of Notre Dame. Alan's contributions to the text are still very much a part of this book. His language informs the discussion of virtually every important topic. In particular, *Studies in American Tort Law* continues to be enriched by Alan's lucid explorations of how law-and-economics scholarship sometimes illuminates the study of tort issues. Many of those discussions are now set off as separate notes on "Economic Analysis" bearing his name.

Chenglin Liu, my colleague at St. Mary's University, is my new co-author on this sixth edition of *Studies in American Tort Law*. Educated in China, Sweden, and the United States, Liu is an outstanding teacher and the author of influential articles published in journals at Harvard, Stanford, Penn, Hastings, Texas, Arizona, Cornell, Washington (in St. Louis), and other fine universities. Liu is one of the leading American scholars on Chinese tort law and on the products liability issues that arise related to food and other goods imported from China.

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